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

[OAR Docket #22-805]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 10. Requirements for Department Programs
35:1-10-6. [AMENDED]

SUMMARY:

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

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 1:00 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-805; filed 11-1-22]

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

[OAR Docket #22-806]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Fee Schedules
35:2-3-5 [AMENDED]
35:2-3-29 [AMENDED]

SUMMARY:

The proposed rule amendments increase and provide for certain fees to cover the Department's costs of labor and supply.

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 10:30 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

Notices of Rulemaking Intent

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-806; filed 11-1-22]

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

[OAR Docket #22-807]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
35:10-1-3 [AMENDED]

SUMMARY:

The proposed rule amendments update handbook and publication references.

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 11:00 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-807; filed 11-1-22]

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

[OAR Docket #22-808]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Livestock Special Sales [AMENDED]
Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets [AMENDED]
Subchapter 22. Swine Pseudorabies and Brucellosis [AMENDED]
Subchapter 34. Feral Swine [AMENDED]
Subchapter 44. Farmed Cervidae [AMENDED]
Subchapter 47. Chronic Wasting Disease (CWD) in Cervids [AMENDED]

SUMMARY:

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

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 10:00 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma

Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: kambi.maddy@ag.ok.gov.

[OAR Docket #22-808; filed 11-1-22]

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

[OAR Docket #22-809]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

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

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

APPENDIX B. Nutrient Management Plan Requirements
When Using Poultry Litter and Other Nutrient Resources [NEW]

SUMMARY:

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

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 1:45 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: kambi.maddy@ag.ok.gov.

[OAR Docket #22-809; filed 11-1-22]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 20. FORESTRY**

[OAR Docket #22-810]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Rural Fire Protection Program Fund Act
Part 3. Financial Assistance Program

35:20-3-9 [AMENDED]

35:20-3-12 [AMENDED]

SUMMARY:

The proposed rule amendments provide for assessment of certain grant administration costs and conform language.

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2) and (20); 2 O.S. § 16-10 et seq., and 59 O.S. § 1201 et seq.

Notices of Rulemaking Intent

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-810; filed 11-1-22]

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

[OAR Docket #22-811]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. Combined Pesticide [AMENDED]

Subchapter 45. Scrap Metal Dealers [AMENDED]

SUMMARY:

The proposed rule amendments add new pesticide application license categories; require examinations for certain applicants to comply with certain federal standards; provide for approval of liability self-insurance policy in certain circumstances; expand certain authority for enforcement of certain federal provisions; provide certain requirements for noncertified applicators; require certain termite pesticide applications to use certain treatment; modify standards

for pretreatment of concrete slabs; and update language to conform with statutory changes.

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 11:15 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-811; filed 11-1-22]

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

[OAR Docket #22-812]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Eggs [AMENDED]

Subchapter 3. Meat Inspection [AMENDED]

Subchapter 5. Poultry Products Inspection [AMENDED]

Subchapter 13. Milk and Milk Products [AMENDED]

Subchapter 15. Organic Products [AMENDED]

Subchapter 17. Produce Safety [AMENDED]

Subchapter 19. Homemade Food [NEW]

SUMMARY:

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

AUTHORITY:

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

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 10:45 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: kambi.maddy@ag.ok.gov.

[OAR Docket #22-812; filed 11-1-22]

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

[OAR Docket #22-813]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. Agritourism

35:40-17-2. [AMENDED]

35:40-17-3. [AMENDED]

35:40-17-4. [AMENDED]

35:40-17-6. [AMENDED]

35:40-17-7. [NEW]

35:40-17-8. [NEW]

35:40-17-9. [NEW]

35:40-17-10. [NEW]

35:40-17-11. [NEW]

Subchapter 21. Oklahoma Healthy Food Financing Program

35:40-21-3. [AMENDED]

Subchapter 23. Made in Oklahoma

35:40-23-2. [AMENDED]

35:40-23-3. [AMENDED]

35:40-23-4. [AMENDED]

35:40-23-4.1. [NEW]

35:40-23-5. [AMENDED]

35:40-23-6. [AMENDED]

35:40-23-7. [AMENDED]

35:40-23-8. [AMENDED]

SUMMARY:

The proposed rule amendments add definitions; modify eligibility requirements of the Agritourism Program; modify eligibility requirements of the Oklahoma Healthy Food Financing Program; modify eligibility and application requirements of the Made in Oklahoma Program; and conform language.

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 5-3.1 et seq., and 2 O.S. §5-14 et seq..

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 9:45 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

Notices of Rulemaking Intent

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-813; filed 11-1-22]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #22-814]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Agriculture Environmental Permitting and AgPDES

Part 1. General Provisions

35:44-1-3 [REVOKED]

Subchapter 3. Permit Conditions and Requirements

35:44-3-3 [REVOKED]

SUMMARY:

The proposed rule amendments revoke obsolete language.

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2-18.2; 2 O.S. § 2A-1 et seq.; 2 O.S. § 2A-21 et seq.; 27A O.S. § 1-3-101(D).

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 1:15 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-814; filed 11-1-22]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 50. AQUACULTURE

[OAR Docket #22-815]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Private Commercial Production

Part 3. Licensing, Reporting, and Records

35:50-1-30 [AMENDED]

35:50-1-31 [AMENDED]

SUMMARY:

The proposed rule amendments increase fees for certain licenses and decals to reflect the increased cost of labor and supplies required to manage the Aquaculture program and modify certain licensing requirements.

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2) and (20); 2 O.S. § 6-311 et seq.

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 10:15 a.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: kambi.maddy@ag.ok.gov.

[OAR Docket #22-815; filed 11-1-22]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 55. COMMERCIAL PET BREEDERS AND ANIMAL SHELTERS**

[OAR Docket #22-816]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Standards of Care

35:55-3-1 [AMENDED]

Subchapter 9. Seizure and Impoundment [NEW]

35:55-9-1 [NEW]

SUMMARY:

The proposed rule amendments delete obsolete language and provide procedure for seizure and impoundment of certain animals.

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); and 4 O.S. § 30.1 et seq.

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: kambi.maddy@ag.ok.gov.

[OAR Docket #22-816; filed 11-1-22]

**TITLE 38. OKLAHOMA BOARD OF LICENSED ALCOHOL AND DRUG COUNSELORS
CHAPTER 10. LICENSURE AND CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS**

[OAR Docket #22-863]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Examinations [AMENDED]

Subchapter 9. Supervision [AMENDED]

Subchapter 13. Continuing Education Requirements [AMENDED]

SUMMARY:

The proposed revisions to Subchapter 7 will allow the addition of the of the NAADAC Master Addiction Counselor exam to be used in place of the IC&RC exam to meet licensure requirements in some cases. Revisions in Subchapter 9 will allow supervisors and candidates to meet through virtual methods for the supervision of candidates without restriction on number of sessions. Subchapter 13 is being amended to allow counselors to obtain all of their required continuing education through online services. This amendment also defines virtual as live in-person attendance and online as on demand or recorded training.

AUTHORITY:

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S., §1875-1 and 1884 (B).

COMMENT PERIOD:

Persons may submit written comments to Richard Pierson at 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, or P. O. Box 54388, Oklahoma City, Ok 73154 until the conclusion of the public hearing on January 13, 2023.

PUBLIC HEARING:

A public hearing will be held at 10:00 A.M. on January 13, 2023 at the Oklahoma Board of Licensed Alcohol and Drug Counselors, 101 N.E. 51st Street, Oklahoma City, Ok 73105 to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of five (5) minutes to speak and must sign in at the door by 10:05 A.M.

Notices of Rulemaking Intent

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Richard Pierson at the above address before the close of the comment period on January 13, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Board of Licensed Alcohol and Drug Counselors, 101 N.E. 51st street, Oklahoma City, Ok 73105 or the Board website at www.okdrugcounselors.org, under laws and regs.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303 (D), a rule impact statement will be prepared and may be obtained from the Oklahoma Board of Licensed Alcohol and Drug counselors at the above address beginning December 10, 2022.

CONTACT PERSON:

Richard Pierson, Executive Director, (405) 521-0779 or рпиerson@okdrugcounselors.org.

[OAR Docket #22-863; filed 11-8-22]

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE CHAPTER 10. LICENSED PROFESSIONAL COUNSELORS

[OAR Docket #22-872]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
- 86:10-1-2. [AMENDED]
- Subchapter 7. Application Procedures
- 86:10-7-2. [AMENDED]
- Subchapter 11. Supervised Experience Requirement
- 86:10-11-4. [AMENDED]
- 86:10-11-5. [AMENDED]
- Subchapter 17. Continuing Education Requirements
- 86:10-17-2. [AMENDED]
- 86:10-17-4.1. [AMENDED]
- 86:10-17-6.1. [AMENDED]
- Subchapter 21. License and Specialty Renewal
- 86:10-21-5. [AMENDED]
- Subchapter 27. Consumer Information
- 86:10-27-5. [NEW]
- Subchapter 29. Enforcement
- 86:10-29-5. [AMENDED]

SUMMARY:

The proposed amendments to 86:10-1-2. more clearly define face-to-face learning and home Study or

technology-assisted distance learning. The proposed amendments to 86:10-7-2. strikes the descriptions for forms that are no longer in use by the Board. The proposed amendments to 86:10-11-4. incorporates the Approved Clinical Supervisor (ACS) by the National Board for Certified Counselors as a qualification to become an approved Licensed Professional Counselor supervisor. The proposed amendments to 86:10-11-5. strikes the limitation of technology-assisted supervision to 56.25 hours and strikes the reference to the licensure examination as candidates for licensure must have a passing result prior to accruing supervised experience hours. The proposed amendments to 86:10-17-2. strikes the requirements for continuing education in counseling ethics and counseling supervision to be accrued in a face-to-face setting. The proposed amendments to 86:10-17-4.1. strikes the requirement limiting continuing education accrued from home-study or technology-assisted distance learning courses to ten (10) hours per renewal period. The proposed amendments to 86:10-17-6.1. strikes the requirement to submit a continuing education roster as this form in no longer in use. The proposed amendments to 86:10-21-5. strikes the requirement to submit a continuing education roster as this form in no longer in use. The proposed new 86:10-27-5. proscribes a way for the public to request promulgation, amendment, or repeal of a rule in accordance with 75 O.S. Sec. 305. The proposed amendments to 86:10-29-5. prohibits a license holder or candidate for licensure named in a complaint from contacting, attempting to contact, or allow anyone else to contact the person(s) who filed the complaint.

AUTHORITY:

State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq.

COMMENT PERIOD:

Persons may submit written comments through December 31, 2022 to Eric Ashmore at 3815 N. Santa Fe, Suite 110, Oklahoma City, OK 73118, or by email to info.behavioralhealth@bbhl.ok.gov.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Eric Ashmore at (405) 522-3696 or info.behavioralhealth@bbhl.ok.gov no later than December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The agency requests that business entities affected by these proposed rules provide the agency with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Eric Ashmore at the above address during the period from December 1, 2022 through December 31, 2022.

COPIES OF PROPOSED RULES:

The proposed rules may be viewed on the agency's website at www.ok.gov/behavioralhealth and copies may be obtained from the State Board of Behavioral Health Licensure's office located at 3815 N. Santa Fe, Suite 110, Oklahoma City, OK 73118. Copies may also be obtained by written request emailed to info.behavioralhealth@bbhl.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 December 1, 2022 at the above addresses.

CONTACT PERSON:

Eric Ashmore, Executive Director, (405) 522-3696, Eric.Ashmore@bbhl.ok.gov.

[OAR Docket #22-872; filed 11-8-22]

**TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE
CHAPTER 15. LICENSED MARITAL AND FAMILY THERAPISTS**

[OAR Docket #22-873]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 86:15-1-2. [AMENDED]
 - 86:15-1-3. [AMENDED]
- Subchapter 5. Application for Licensure
 - 86:15-5-3. [AMENDED]
 - 86:15-5-4. [AMENDED]
- Subchapter 9. Supervised Experience Requirements
 - 86:15-9-4. [AMENDED]
- Subchapter 13. Issuance and Maintenance of License
 - 86:15-13-3. [AMENDED]
 - 86:15-13-4. [AMENDED]
- Subchapter 15. Enforcement
 - 86:15-15-5. [AMENDED]

SUMMARY:

The proposed amendments to 86:15-1-2. proscribes a way for the public to request promulgation, amendment, or repeal of a rule in accordance with 75 O.S. Sec. 305. The proposed amendments to 86:15-1-3. more clearly define face-to-face learning and home Study or technology-assisted distance learning. The proposed amendments to 86:15-5-3. more clearly define the academic requirements for practicum/internship. The proposed amendments to 86:15-5-4. strikes the descriptions for forms that are no longer in use by the Board. The proposed amendments to 86:15-9-4. strikes the limitation of technology-assisted supervision to 75 hours. The proposed amendments to 86:15-13-3. strikes the requirement to submit a continuing education roster as this form in no longer in use. The proposed

amendments to 86:15-13-4. strikes the requirements for continuing education in mental health ethics and therapy supervision to be pre-approved by the Board, strikes the requirements for continuing education in therapy ethics to be accrued in a face-to-face setting, strikes the requirement limiting continuing education accrued from home-study or technology-assisted distance learning courses to ten (10) hours per renewal period, and strikes the requirement to submit a continuing education roster as this form in no longer in use. The proposed amendments to 86:15-15-5. prohibits a license holder or candidate for licensure named in a complaint from contacting, attempting to contact, or allow anyone else to contact the person(s) who filed the complaint.

AUTHORITY:

State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq.

COMMENT PERIOD:

Persons may submit written comments through December 31, 2022 to Eric Ashmore at 3815 N. Santa Fe, Suite 110, Oklahoma City, OK 73118, or by email to info.behavioralhealth@bbhl.ok.gov.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Eric Ashmore at (405) 522-3696 or info.behavioralhealth@ok.gov no later than December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The agency requests that business entities affected by these proposed rules provide the agency with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Eric Ashmore at the above address during the period from December 1, 2022 through December 31, 2022.

COPIES OF PROPOSED RULES:

The proposed rules may be viewed on the agency's website at www.ok.gov/behavioralhealth and copies may be obtained from the State Board of Behavioral Health Licensure's office located at 3815 N. Santa Fe, Suite 110, Oklahoma City, OK 73118. Copies may also be obtained by written request emailed to info.behavioralhealth@bbhl.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 December 1, 2022 at the above addresses.

CONTACT PERSON:

Eric Ashmore, Executive Director, (405) 522-3696, Eric.Ashmore@bbhl.ok.gov.

[OAR Docket #22-873; filed 11-8-22]

Notices of Rulemaking Intent

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE CHAPTER 20. LICENSED BEHAVIORAL PRACTITIONERS

[OAR Docket #22-874]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

86:20-1-2. [AMENDED]

Subchapter 3. Forms

86:20-3-2. [AMENDED]

Subchapter 13. Supervised Experience Requirement

86:20-13-2. [AMENDED]

Subchapter 19. Continuing Education Requirements

86:20-19-2. [AMENDED]

Subchapter 27. Consumer Information

86:20-27-4. [NEW]

Subchapter 29. Enforcement

86:20-29-5. AMENDED]

SUMMARY:

The proposed amendments to 86:20-1-2. more clearly define face-to-face learning and home Study or technology-assisted distance learning. The proposed amendments to 86:20-3-2. strikes the descriptions for forms that are no longer in use by the Board. The proposed amendments to 86:20-13-2. strikes the limitation of technology-assisted supervision to 56.25 hours. The proposed amendments to 86:20-19-2. strikes the requirement to submit a continuing education roster as this form in no longer in use. The proposed new 86:20-27-4. proscribes a way for the public to request promulgation, amendment, or repeal of a rule in accordance with 75 O.S. Sec. 305. The proposed amendments to 86:10-29-5. prohibits a license holder or candidate for licensure named in a complaint from contacting, attempting to contact, or allow anyone else to contact the person(s) who filed the complaint.

AUTHORITY:

State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq.

COMMENT PERIOD:

Persons may submit written comments through December 31, 2022 to Eric Ashmore at 3815 N. Santa Fe, Suite 110, Oklahoma City, OK 73118, or by email to info.behavioralhealth@bbhl.ok.gov.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Eric Ashmore at (405) 522-3696 or info.behavioralhealth@bbhl.ok.gov no later than December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The agency requests that business entities affected by these proposed rules provide the agency with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Eric Ashmore at the above address during the period from December 1, 2022 through December 31, 2022.

COPIES OF PROPOSED RULES:

The proposed rules may be viewed on the agency's website at www.ok.gov/behavioralhealth and copies may be obtained from the State Board of Behavioral Health Licensure's office located at 3815 N. Santa Fe, Suite 110, Oklahoma City, OK 73118. Copies may also be obtained by written request emailed to info.behavioralhealth@bbhl.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 December 1, 2022 at the above addresses.

CONTACT PERSON:

Eric Ashmore, Executive Director, (405) 522-3696, Eric.Ashmore@bbhl.ok.gov.

[OAR Docket #22-874; filed 11-8-22]

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

[OAR Docket #22-851]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

252:100-5-2.2. Annual operating fees [AMENDED]

Subchapter 49. Oklahoma Emission Reduction Technology Rebate Program [NEW]

252:100-49-1. Purpose and Applicability [NEW]

252:100-49-3. Definitions [NEW]

252:100-49-5. Program criteria and qualification determination [NEW]

252:100-49-7. Sunset provision [NEW]

SUMMARY:

The Department of Environmental Quality (Department or DEQ) is proposing to amend OAC 252:100, Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, to update the annual operating fee schedule language relating to minor facilities. Part 70 (major) sources are subject to adjusted annual operating fees based on the Consumer Price Index (CPI). The gist of this rule proposal and the underlying

reason for the rulemaking is to include the use of the CPI in the adjustment of annual operating fees for minor facilities.

The Department is proposing to add Subchapter 49, Oklahoma Emission Reduction Technology Rebate Program to OAC 252:100, to implement applicable provisions of the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, et seq. The act created the "Oklahoma Emission Reduction Technology Rebate Program," administered by the DEQ and the Oklahoma Tax Commission, to provide an incentive for "Emission Reduction Projects" - implementation of new and innovative technologies to reduce air pollutant emissions from oil and gas facilities. The gist of this rule proposal and the underlying reason for the rulemaking is to implement the Department's responsibilities under the Oklahoma Emission Reduction Technology Incentive Act.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-3-402, and 2-5-106.

Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through 2-5-117.

Oklahoma Uniform Permitting Act; 27A O.S. §§ 2-14-101 through 2-14-304.

Oklahoma Emission Reduction Technology Incentive Act; 68 O.S. § 55011.

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 3, 2023. Oral comments may be made at the January 11, 2023 Air Quality Advisory Council special meeting and at the February 17, 2023 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 11, 2023, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Friday, February 17, 2023, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 and 27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 C.F.R. Part 70 and 27A O.S. § 2-5-112(B)(9).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue

loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, or reviewed online at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>.

RULE IMPACT STATEMENTS:

Pursuant to 75 O.S. § 303(D), a rule impact statement was prepared and is available on the DEQ website at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>. Copies may also be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to AQDRuleComments@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4177. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-851; filed 11-7-22]

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

[OAR Docket #22-827]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 23. Regulated Medical Waste Management

Part 1. General Provisions

252:515-23-1 [AMENDED]

252:515-23-2 [AMENDED]

SUMMARY:

The Department of Environmental Quality (DEQ) is proposing to amend OAC 252:515. The gist of this rulemaking is to make minor changes to clarify existing language related to the generation of Regulated Medical Waste and acknowledge generators may be subject to rules of other agencies.

Notices of Rulemaking Intent

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, and 2-10-201; Solid Waste Management Advisory Council; 27A O.S. § 2-2-201.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 1, 2022 through January 11, 2023. Oral comments may be made at the Solid Waste Management Advisory Council meeting at 10:00 a.m. on January 12, 2023 and at the Environmental Quality Board meeting to be held on February 17, 2023 at the DEQ, first floor, 707 N. Robinson, Oklahoma City, OK 73102.

PUBLIC HEARINGS:

Before the Solid Waste Management Advisory Council at 10:00 a.m. on January 12, 2023, in the Multi-Purpose Room, first floor of the DEQ, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board on February 17, 2023, at the DEQ, first floor, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person and may be viewed on the DEQ website at <https://www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/>.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the DEQ and may be requested from the contact person or viewed on the DEQ website at <https://www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/>.

CONTACT PERSON:

Anne Marie Smith, Land Protection Division, Solid Waste Permitting Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at public.comments@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

ADDITIONAL INFORMATION:

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

[OAR Docket #22-827; filed 11-4-22]

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

[OAR Docket #22-828]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction

252:606-1-1 [AMENDED]

252:606-1-2 [AMENDED]

252:606-1-4 [AMENDED]

Subchapter 3. Discharge Permitting Process for Individual and General Discharge Permits

252:606-3-6 [AMENDED]

Subchapter 5. Discharge Permit Requirements

252:606-5-1 [AMENDED]

252:606-5-4 [AMENDED]

Subchapter 8. Biosolids Requirements

252:606-8-2 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and OWRB, and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new rules being promulgated due to the legislation referenced above. The Department also proposes to update its rules concerning the date of incorporation by reference for the Code of Federal Regulations from July 19, 2021, to July 1, 2022. The final regulatory change consisted of a technical amendment to modify the submission location for Continuous Release Reports (CCRs) subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These reports were submitted to respective EPA regional offices but with the technical amendment, EPA now requires reports be submitted to the appropriate EPA Headquarters office. The amendment also corrected a typographical error, corrected citations within the section, and amended the listed authority.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-828; filed 11-4-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 611. GENERAL WATER QUALITY**

[OAR Docket #22-829]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
- 252:611-1-1 [AMENDED]
- 252:611-1-2 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating a reference from OAC 785:45 to OAC 252:730 and changing a reference denoting that the Department, not the OWRB, has authority for administering OWQS's. OAC 252:730 is a new rule being promulgated due to the legislation referenced above. The Department also proposes to update definitions referenced in the rule.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs

Notices of Rulemaking Intent

expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-829; filed 11-4-22]

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

[OAR Docket #22-830]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction
252:616-1-2 [AMENDED]

Subchapter 9. Tank System Standards
252:616-9-1 [AMENDED]

Subchapter 11. Land Application Standards
252:616-11-1 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating a reference from OAC 785:45 to OAC 252:730 and changing a reference denoting that the Department, not the OWRB, has authority for administering

OWQS's. OAC 252:730 is a new rule being promulgated due to the legislation referenced above.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For

hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-830; filed 11-4-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 621. NON-INDUSTRIAL DISCHARGING AND PUBLIC WATER SUPPLY LAGOONS**

[OAR Docket #22-831]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:621-1-2 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating a reference from OAC 785:45 to OAC 252:730 and changing a reference from OWRB to Department of Environmental Quality in the definition of "Oklahoma's Water Quality Standards". OAC 252:730 is a new rule being promulgated due to the legislation referenced above.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-831; filed 11-4-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 626. PUBLIC WATER SUPPLY CONSTRUCTION STANDARDS**

[OAR Docket #22-832]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction
252:626-1-2 [AMENDED]
Subchapter 3. Permit Procedures
252:626-3-2 [AMENDED]
252:626-3-6 [AMENDED]
252:626-3-7 [AMENDED]

Notices of Rulemaking Intent

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is that on July 1, 2021, House Bill 2402 was enacted authorizing conservancy districts, municipalities, counties, public trusts, and other political subdivisions operating a public water supply system or wastewater treatment system to utilize design-build as a project delivery method for those systems. Design-build is defined as a project delivery method in which one entity works under a single contract to provide design and construction services. The bill requires that the Department incorporate a flexible permitting process to allow this design-build authorization into its rules and authorizes up to 5 pilot projects in the interim before the rules are adopted. This bill was codified in Oklahoma Statutes, Title 61, Section 220.1. The Department proposes to update this rule to include definitions for "Design-build", "Design package", and "Flexible permitting process", and to update language regarding Construction Permit Applications, Engineering Reports, and Plans and Specifications.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at

<https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-832; filed 11-4-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 628. INDIRECT POTABLE REUSE FOR SURFACE WATER AUGMENTATION

[OAR Docket #22-833]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:628-1-2 [AMENDED]

252:628-1-3 [AMENDED]

Subchapter 3. Benchmarks and Implementation for IPR

Source Water Discharges

252:628-3-2 [AMENDED]

252:628-3-6 [AMENDED]

252:628-3-7 [AMENDED]

Subchapter 9. Permitting Requirements for IPR Source Water

252:628-9-4 [AMENDED]

Subchapter 11. IPR Receiving Waterbody Monitoring

252:628-11-1 [AMENDED]

252:628-11-2 [AMENDED]

252:628-11-3 [AMENDED]

252:628-11-4 [AMENDED]

252:628-11-5 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for

the Department to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and OWRB, and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new rules being promulgated due to the legislation referenced above.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-833; filed 11-4-22]

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

[OAR Docket #22-834]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction
252:631-1-3 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is to update the rule concerning the date of the incorporation by reference of certain federal regulations from July 1, 2021, to August 17, 2022, which allows for inclusion of all pertinent CFR parts amended between July 1, 2021, and August 17, 2022, specifically allowing for newly approved alternative testing methods for contaminants listed at 40 CFR 141.21, Appendix A to Subpart C.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ

Notices of Rulemaking Intent

(during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-834; filed 11-4-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 633. DRINKING WATER STATE REVOLVING FUND

[OAR Docket #22-835]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Appendix A. Funding Priority Formula [REVOKED]

Appendix A. Funding Priority Formula [NEW]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is to remove language related to application of the median household income as an element used by the Department in prioritizing projects seeking funding through the Drinking Water State Revolving Fund (DWSRF) program. This change is intended to clarify that the Department is to utilize information from the latest census on the median household income when prioritizing the award of DWSRF funds, rather than the dollar amounts currently listed in Appendix A. The language the Department proposes to remove

does not reflect the latest census information on median household income and was intended to be illustrative only. Removing this language will clarify that DEQ is to utilize the information from the latest census for the household median income and is not required to only use the dollar amounts listed in Appendix A.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-835; filed 11-4-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 652. UNDERGROUND INJECTION CONTROL**

[OAR Docket #22-852]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Exclusionary Siting Criteria for Class I Wells 252:652-3-1. Siting criteria [AMENDED]

SUMMARY:

The underlying reason for the rulemaking is the Legislature passed and the Governor signed Senate Bill No. 1325 and House Bill No. 3824 which transfer authority for establishing Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically allows DEQ to issue Water Quality Standard Variances.

The gist of the changes to this rule includes updating an internal reference to OAC 785:45 and "Oklahoma Water Resources Board (OWRB)" and replacing it with a reference to OAC 252:730, and "Department of Environmental Quality", respectively. This rulemaking is the permanent replacement for the Emergency Rules signed by the Governor on October 25, 2022.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ

Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

David Cates, Land Protection Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at public.comments@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-852; filed 11-7-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 653. AQUIFER STORAGE AND RECOVERY**

[OAR Docket #22-853]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Raw Water and Aquifer Characterization 252:653-3-4. Groundwater standards [AMENDED]

Subchapter 5. ~~Aquifer Storage and Recovery Treatment Plant Construction~~ ASR Treatment Plant Construction

252:653-5-1. Permit and pilot study required [AMENDED]

Subchapter 9. Aquifer Storage & Recovery Operations

Notices of Rulemaking Intent

252:653-9-2. Duration and continuation of expiring permit
[AMENDED]

SUMMARY:

The underlying reason for the rulemaking is the Legislature passed and the Governor signed Senate Bill No. 1325 and House Bill No. 3824 which transfer authority for establishing Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically allows DEQ to issue Water Quality Standard Variances.

The gist of the changes to these rules includes updating internal references to OAC 785:45 and replacing these references with to OAC 252:730.

This rulemaking is the permanent replacement for the Emergency Rules signed by the Governor on October 25, 2022.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

David Cates, Land Protection Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at public.comments@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-853; filed 11-7-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 656. WATER POLLUTION CONTROL FACILITY CONSTRUCTION STANDARDS

[OAR Docket #22-854]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction

252:656-1-2 [AMENDED]

Subchapter 3. Permit Procedures

252:656-3-1 [AMENDED]

252:656-3-4 [AMENDED]

252:656-3-5 [AMENDED]

Subchapter 11. Lagoon Standards

252:656-11-2 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is that on July 1, 2021, House Bill 2402 was enacted authorizing conservancy districts, municipalities, counties, public trusts, and other political subdivisions operating a public water supply system or wastewater treatment system to utilize design-build as a project delivery method for those systems. Design-build is defined as a project delivery method in which one entity works under a single contract to provide design and construction services. The bill requires that the Department incorporate a flexible permitting process to allow this design-build authorization into its rules and authorizes up to 5 pilot projects in the interim before the rules are adopted. This bill was codified in Oklahoma Statutes, Title 61, Section 220.1. The Department proposes to update this rule to include definitions for "Design-build", "Design package", and "Flexible permitting process", and to update language regarding Permitting Process, Engineering Report, and Plans

and Specifications. Additionally, the Legislature passed and the Governor signed Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating a reference from OAC 785:45 to OAC 252:730. OAC 252:730 is a new rule being promulgated due to the legislation referenced above.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email

brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-854; filed 11-7-22]

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

[OAR Docket #22-855]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. Introduction
 - 252:690-1-1 [AMENDED]
 - 252:690-1-2 [AMENDED]
 - 252:690-1-3 [AMENDED]
 - 252:690-1-4.1 [AMENDED]
 - 252:690-1-6 [AMENDED]
- Subchapter 3. Point Source Discharges
 - 252:690-3-11 [AMENDED]
 - 252:690-3-16 [AMENDED]
 - 252:690-3-18 [AMENDED]
 - 252:690-3-21 [AMENDED]
 - 252:690-3-26 [AMENDED]
 - 252:690-3-40 [AMENDED]
 - 252:690-3-47 [AMENDED]
 - 252:690-3-54 [AMENDED]
 - 252:690-3-60 [AMENDED]
 - 252:690-3-61 [AMENDED]
 - 252:690-3-64 [AMENDED]
 - 252:690-3-67 [AMENDED]
 - 252:690-3-71 [AMENDED]
 - 252:690-3-74 [AMENDED]
 - 252:690-3-82 [AMENDED]
 - 252:690-3-87 [AMENDED]
 - 252:690-3-91 [AMENDED]
 - 252:690-3-93 [AMENDED]
- Subchapter 5. Groundwater Protection
 - 252:690-5-10 [AMENDED]
 - 252:690-5-17 [AMENDED]
- Subchapter 7. Water Quality Standards Implementation
 - Plan, Oklahoma Department of Environmental Quality [NEW]
 - 252:690-7-1 [NEW]
 - 252:690-7-2 [NEW]
 - 252:690-7-3 [NEW]

Notices of Rulemaking Intent

Appendix A. Water Quality Standards Implementation Plan, Oklahoma Department of Environmental Quality [REVOKED]

Appendix A. Water Quality Standards Implementation Plan, Oklahoma Department of Environmental Quality [NEW]

Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [REVOKED]

Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [NEW]

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

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

Appendix D. Whole Effluent Toxicity (WET) Testing Critical Dilutions and Dilution Series [REVOKED]

Appendix D. Whole Effluent Toxicity (WET) Testing Critical Dilutions and Dilution Series [NEW]

Appendix E. Equations for Implementation of Temperature Criteria to Protect the Fish and Wildlife Propagation Beneficial Use [REVOKED]

Appendix E. Equations for Implementation of Temperature Criteria to Protect the Fish and Wildlife Propagation Beneficial Use [NEW]

Appendix F. Equations for Implementation of Numerical Criteria for Toxic Substances to Protect the Fish and Wildlife Propagation Beneficial Use [REVOKED]

Appendix F. Equations for Implementation of Numerical Criteria for Toxic Substances to Protect the Fish and Wildlife Propagation Beneficial Use [NEW]

Appendix G. Equations for Implementation of Numerical Human Health and Raw Water Criteria to Protect the Fish Consumption and Public and Private Water Supply Beneficial Uses [REVOKED]

Appendix G. Equations for Implementation of Numerical Human Health and Raw Water Criteria to Protect the Fish Consumption and Public and Private Water Supply Beneficial Uses [NEW]

Appendix H. Equations for Implementation of Numerical Criteria to Protect the Agriculture Beneficial Use [REVOKED]

Appendix H. Equations for Implementation of Numerical Criteria to Protect the Agriculture Beneficial Use [NEW]

Appendix I. Performance-Based Effluent Monitoring Frequency Reductions and Increases [REVOKED]

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

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor

signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and OWRB, and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new rules being promulgated due to the legislation referenced above. Additionally, the Department moved the text of Appendix A to the body of the rule. Thus, definitions in Appendix A have been moved to be with other definitions for this Chapter, and the remainder of Appendix A has been added as Subchapter 7. Other minor changes were made to modernize the rule and remove outdated references. The Department also proposes to update its rules concerning the date of incorporation by reference for the Code of Federal Regulations from July 19, 2021, to July 1, 2022. The final regulatory change consisted of a technical amendment to modify the submission location for Continuous Release Reports (CCRs) subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These reports were submitted to respective EPA regional offices but with the technical amendment, EPA now requires reports be submitted to the appropriate EPA Headquarters office. The amendment also corrected a typographical error, corrected citations within the section, and amended the listed authority.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction,

labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-855; filed 11-7-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION**

[OAR Docket #22-856]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 252:710-1-8 [AMENDED]
 - 252:710-1-9 [AMENDED]
- Subchapter 3. Certification
 - 252:710-3-37 [AMENDED]
- Subchapter 5. Duties and Responsibilities
 - 252:710-5-53 [AMENDED]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is to update the rule to allow the Department to permanently revoke, or revoke for a set time, an operator's certification; to better define special requirements for instructors of approved training courses including taking a Department-proctored exam; and, to allow recording of

laboratory analyses utilizing software applications in addition to bound volumes.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For

Notices of Rulemaking Intent

hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[*OKAR Docket #22-856; filed 11-7-22*]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 730. OKLAHOMA'S WATER QUALITY STANDARDS

[*OKAR Docket #22-857*]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

252:730-1-1 [NEW]

252:730-1-2 [NEW]

252:730-1-3 [NEW]

252:730-1-4 [NEW]

252:730-1-5 [NEW]

252:730-1-6 [NEW]

Subchapter 3. Antidegradation Requirements [NEW]

252:730-3-1 [NEW]

252:730-3-2 [NEW]

Subchapter 5. Surface Water Quality Standards [NEW]

252:730-5-1 [NEW]

252:730-5-2 [NEW]

252:730-5-3 [NEW]

252:730-5-4 [NEW]

252:730-5-5 [NEW]

252:730-5-6 [NEW]

252:730-5-7 [NEW]

252:730-5-8 [RESERVED]

252:730-5-9 [NEW]

252:730-5-10 [NEW]

252:730-5-11 [NEW]

252:730-5-12 [NEW]

252:730-5-13 [NEW]

252:730-5-14 [RESERVED]

252:730-5-15 [RESERVED]

252:730-5-16 [NEW]

252:730-5-17 [NEW]

252:730-5-18 [NEW]

252:730-5-19 [NEW]

252:730-5-20 [NEW]

252:730-5-21 [RESERVED]

252:730-5-22 [RESERVED]

252:730-5-23 [RESERVED]

252:730-5-24 [RESERVED]

252:730-5-25 [NEW]

252:730-5-26 [NEW]

252:730-5-27 [RESERVED]

252:730-5-28 [RESERVED]

252:730-5-29 [NEW]

Subchapter 7. Groundwater Quality Standards [NEW]

252:730-7-1 [NEW]

252:730-7-2 [NEW]

252:730-7-3 [NEW]

252:730-7-4 [NEW]

252:730-7-5 [NEW]

Appendix A. Designated Beneficial Uses of Surface Waters [NEW]

Appendix B. Areas with Waters of Recreational and/or Ecological Significance [NEW]

Appendix C. [RESERVED]

Appendix D. Classifications for Groundwater in Oklahoma [NEW]

Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]

Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except as Indicated) [NEW]

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

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

Appendix I. Criteria for Groundwater Protection [NEW]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and OWRB, and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new rules being promulgated due to the legislation referenced above.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

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PUBLIC HEARINGS:

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Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

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RULE IMPACT STATEMENT:

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CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

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[OAR Docket #22-857; filed 11-7-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 740. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS**

[OAR Docket #22-858]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

252:740-1-1 [NEW]

252:740-1-2 [NEW]

252:740-1-3 [NEW]

252:740-1-4 [NEW]

252:740-1-5 [NEW]

252:740-1-6 [NEW]

Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing [NEW]

252:740-3-1 [NEW]

252:740-3-2 [NEW]

252:740-3-3 [NEW]

252:740-3-4 [NEW]

252:740-3-5 [NEW]

Subchapter 5. Implementation of Numerical Criteria to Protect Fish and Wildlife From Toxicity Due to Conservative Substances [NEW]

252:740-5-1 [NEW]

252:740-5-2 [NEW]

252:740-5-3 [NEW]

252:740-5-4 [NEW]

Subchapter 7. Implementation of Numerical Criteria to Protect Human Health From Toxicity Due to Conservative Substances [NEW]

252:740-7-1 [NEW]

252:740-7-2 [NEW]

252:740-7-3 [NEW]

Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use [NEW]

252:740-9-1 [NEW]

252:740-9-2 [NEW]

252:740-9-3 [NEW]

252:740-9-4 [NEW]

Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation [NEW]

252:740-11-1 [NEW]

252:740-11-2 [NEW]

252:740-11-3 [NEW]

252:740-11-4 [NEW]

252:740-11-5 [NEW]

Subchapter 13. Implementation of Antidegradation Policy [NEW]

252:740-13-1 [NEW]

252:740-13-2 [NEW]

252:740-13-3 [NEW]

252:740-13-4 [NEW]

252:740-13-5 [NEW]

252:740-13-6 [NEW]

252:740-13-7 [NEW]

252:740-13-8 [NEW]

Subchapter 15. Use Support Assessment Protocols [NEW]

252:740-15-1 [NEW]

252:740-15-2 [NEW]

252:740-15-3 [NEW]

252:740-15-4 [NEW]

252:740-15-5 [NEW]

252:740-15-6 [NEW]

252:740-15-7 [NEW]

252:740-15-8 [NEW]

252:740-15-9 [NEW]

252:740-15-10 [NEW]

Notices of Rulemaking Intent

252:740-15-11 [NEW]

252:740-15-12 [NEW]

Subchapter 17. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation [NEW]

252:740-17-1 [NEW]

252:740-17-2 [NEW]

252:740-17-3 [NEW]

Appendix A. [RESERVED]

Appendix B. Mean Hardness (CaCO₃) and pH by Stream Segment [NEW]

Appendix C. Index of Biological Integrity [NEW]

SUMMARY:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department and specifically allows for the Department to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and OWRB, and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new rules being promulgated due to the legislation referenced above.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.

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

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 1, 2022, through January 5, 2023. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 5, 2023, and at the Environmental Quality Board meeting on February 17, 2023.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council on January 5, 2023, at 1:00 p.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled on Friday, February 17, 2023, at 9:30 a.m. at the DEQ Headquarters, First Floor, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <https://www.deq.ok.gov/council-meetings/water-quality-management-advisory-council/>.

CONTACT PERSON:

Brian Clagg, Water Quality Division, 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, email brian.clagg@deq.ok.gov, phone (405) 702-8100, or fax (405) 702-8101.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #22-858; filed 11-7-22]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 1. COMMISSION POWERS AND JURISDICTION

[OAR Docket #22-787]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:1-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 2:00 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-787; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 10. RACING ORGANIZATION**

[OAR Docket #22-788]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:10-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 2:15 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct

costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-788; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 15. LICENSING**

[OAR Docket #22-789]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

325:15-1-2 [AMENDED]

Subchapter 5. Occupation Licensing

325:15-5-1 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language; update language; and modify requirements for certain occupation license.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 2:30 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by

Notices of Rulemaking Intent

the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-789; filed 10-31-22]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 20. RACING OFFICIALS AND RACING PERSONNEL

[OAR Docket #22-790]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:20-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 2:45 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-790; filed 10-31-22]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 25. ENTRIES AND DECLARATIONS

[OAR Docket #22-791]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:25-1-2 [AMENDED]

325:25-1-18 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language; modify requirements of certain list of horses within an enclosure; and update language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 3:00 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-791; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 30. CLAIMING RACES**

[OAR Docket #22-792]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:30-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 3:15 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-792; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 35. GENERAL CONDUCT**

[OAR Docket #22-793]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:35-1-2 [AMENDED]

325:35-1-9 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language and modify requirements for possession of certain weapons within certain enclosure.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 3:30 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

Notices of Rulemaking Intent

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-793; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING
COMMISSION
CHAPTER 50. HUMAN SUBSTANCE ABUSE
TESTING**

[OAR Docket #22-794]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:50-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 3:45 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-794; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING
COMMISSION
CHAPTER 55. FIRE PREVENTION AND
SECURITY**

[OAR Docket #22-795]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:55-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 4:00 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-795; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 65. PARI-MUTUEL WAGERING**

[OAR Docket #22-796]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
325:65-1-31.1 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 4:15 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-796; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 70. OBJECTIONS AND PROTESTS; HEARINGS AND APPEALS**

[OAR Docket #22-797]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:70-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 4:30 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

Notices of Rulemaking Intent

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-797; filed 10-31-22]

**TITLE 325. OKLAHOMA HORSE RACING
COMMISSION
CHAPTER 75. OKLAHOMA-BRED
PROGRAM**

[OAR Docket #22-798]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

325:75-1-2 [AMENDED]

SUMMARY:

The proposed rule amendments modify definitions to conform language.

AUTHORITY:

3A O.S. § 200 et seq.; and Oklahoma Horse Racing Commission

COMMENT PERIOD:

Persons may submit written comments to Kambi Maddy at kambi.maddy@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 2, 2022, and ending January 4, 2023.

PUBLIC HEARING:

A public hearing will be held at 4:45 p.m., January 4, 2023, in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kambi Maddy at the address listed above during the period beginning December 2, 2022, and ending January 4, 2023.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting app.ag.ok.gov/proposedrules/ or by contacting Kambi Maddy at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Kambi Maddy, (405) 522-5803, e-mail address: at kambi.maddy@ag.ok.gov.

[OAR Docket #22-798; filed 10-31-22]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #22-837]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

365-1-1-4. Requests for information [AMENDED]

365-1-1-4.1. Fees [REVOKED]

365-1-1-7. Electronic Signatures [NEW]

Subchapter 7. Hearings

365-1-7-1. Setting hearings; demands for hearings [AMENDED]

365-1-7-4. Conduct of hearings [AMENDED]

Subchapter 9. Description of Forms and Instructions

365-1-9-1. Company licensure forms [AMENDED]

365-1-9-5. Surplus lines forms [AMENDED]

365-1-9-11. Applications [AMENDED]

365-1-9-12. Agent and customer service representative appointment forms [AMENDED]

365-1-9-13. Suggested language for producers bonds [AMENDED]

365-1-9-16. Producer licensing forms [AMENDED]

365-1-9-17. Other agents forms [AMENDED]

365-1-9-17.2. Name change on an individual license [AMENDED]

365-1-9-18. Bail bond forms [AMENDED]

Subchapter 11. E.A.G.L.E. Mediation Program

365-1-11-9. Reporting [AMENDED]

Subchapter 13. Electronic filings

365-1-13-1. Electronic filings [AMENDED]

SUMMARY:

365-1-1-4. Updated to reflect open records fees as prescribed by statute.

365-1-1-4.1. Removes unnecessary language pursuant to Governors Executive Order on rule regulation (EO2020-03).

365-1-1-7. Adds language allowing for electronic signatures.

365-1-7-1. Adds language allowing hearings to be held remotely in certain circumstances. Provides for electronic transmission and signature of remote-hearing documents.

365-1-7-4. Sets timeframe for the Department to receive evidence when hearing is to be held remotely.

365-1-9-1. Updates spelling of Marshal and citation format.

365-1-9-5. Removes requirement for a wet signature.

365:1-9-11. Removes Insurance Consultant and Customer Service Representative due to legislative changes in 2022.

365:1-9-12. Removes customer service representative due to legislative changes in 2022.

365:1-9-13. Removes the Insurance Consultant Bond due to legislative changes in 2022. Clarifies "Insurance Brokers" means "Surplus Lines Insurance Brokers."

365:1-9-16. Removes the Insurance Consultant Certificate due to legislative changes in 2022. Removes Life or Accident and Health Insurance Broker License Certificate due to legislative changes in 2018.

365:1-9-17. Removes the consulting agreement due to legislative changes in 2022.

365:1-9-17.2. Removes unnecessary language.

365:1-9-18. Updates requirements for bail bondsman application.

365:1-11-9. Removes requirement for a wet signature.

365:1-13-1. Removes Insurance Consultant and Customer Service Representative applications due to legislative changes in 2022.

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Wednesday, January 4th, at 9:00 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Room 132, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, at the mailing address above on or before 5:00 p.m. on January 6, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Insurance Department's website at www.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address

above and will be available on the Insurance Department's website at www.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-837; filed 11-7-22]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 10. LIFE, ACCIDENT AND
HEALTH**

[OAR Docket #22-838]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

Subchapter 5. Minimum Standards; Contract Guidelines

Part 9. Universal Life Rule

365:10-5-81. Valuation [AMENDED]

365:10-5-82. Nonforfeiture [AMENDED]

Part 13. Medicare Supplement Insurance Minimum Standards

365:10-5-129. Open enrollment [AMENDED]

SUMMARY:

365:10-5-81. Updates to citations referenced in the rule.

365:10-5-82. Updates to citations referenced in the rule.

365:10-5-129. Updates language to allow consumers with supplemental plans to move from one plan to another. It also provides notice to consumers with disabilities who will be moving to Medicare.

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358 and 1302.

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Wednesday, January 4th, at 9:00 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Room 132, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, at the mailing address above on or before 5:00 p.m. on January 6, 2023.

Notices of Rulemaking Intent

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Insurance Department's website at www.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address above and will be available on the Insurance Department's website at www.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-838; filed 11-7-22]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #22-839]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

365:15-1-1. Purpose [REVOKED]

365:15-1-2. Severability [REVOKED]

365:15-1-7. Fictitious grouping defined [REVOKED]

365:15-1-10. Policy of insurance shall include insurer's complete name and street address and insurance claim warning. [AMENDED]

Subchapter 3. Claims Resolution and Unfair Claim Settlement Practices [REVOKED]

365:15-3-1. Purpose [REVOKED]

365:15-3-2. Definitions [REVOKED]

365:15-3-2.1. Minimum standard of performance [REVOKED]

365:15-3-3. File and record documentation [REVOKED]

365:15-3-4. Misrepresentation of policy provisions [REVOKED]

365:15-3-5. Failure to acknowledge pertinent communications [REVOKED]

365:15-3-6. Standards for prompt investigation of claims [REVOKED]

365:15-3-7. Standards for prompt, fair and equitable settlements applicable to all insurers [REVOKED]

365:15-3-8. Standards for prompt, fair and equitable settlements applicable to automobile insurance [REVOKED]

365:15-3-9. Separability provision [REVOKED]

Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation

365:15-7-1. Purpose [REVOKED]

365:15-7-2. Severability [REVOKED]

SUMMARY:

365:15-1-1. Revoked pursuant to the Governors EO2022-03.

365:15-1-2. Revoked pursuant to the Governors EO2022-03.

365:15-1-7. Revoked pursuant to the Governors EO2022-03.

365:15-1-10. Updates rule to match statutory provision.

365:15-3-1. Revoked pursuant to the Governors EO2022-03.

365:15-3-2. Revoked pursuant to the Governors EO2022-03.

365:15-3-2.1. Revoked pursuant to the Governors EO2022-03.

365:15-3-3. Revoked pursuant to the Governors EO2022-03.

365:15-3-4. Revoked pursuant to the Governors EO2022-03.

365:15-3-5. Revoked pursuant to the Governors EO2022-03.

365:15-3-6. Revoked pursuant to the Governors EO2022-03.

365:15-3-7. Revoked pursuant to the Governors EO2022-03.

365:15-3-8. Revoked pursuant to the Governors EO2022-03.

365:15-3-9. Revoked pursuant to the Governors EO2022-03.

365:15-7-1. Revoked pursuant to the Governors EO2022-03.

365:15-7-2. Revoked pursuant to the Governors EO2022-03.

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Wednesday, January 4th, at 9:00 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Room 132, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director,

Oklahoma Insurance Department, at the mailing address above on or before 5:00 p.m. on January 6, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Insurance Department's website at www.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address above and will be available on the Insurance Department's website at www.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-839; filed 11-7-22]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

[OAR Docket #22-840]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 365:25-1-1. Purpose [REVOKED]
 - 365:25-1-2. Severability [REVOKED]
- Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors
 - 365:25-3-1. Insurance producers continuing education [AMENDED]
 - 365:25-3-12. Insurance consultants and surplus lines insurance brokers [AMENDED]
 - 365:25-3-14. Insurance adjusters continuing education [AMENDED]
 - 365:25-3-15. Variable product licensing [AMENDED]
 - 365:25-3-21. Training and education requirements for the sale of annuities [AMENDED]
- Subchapter 5. Bail Bondsmen
 - Part 1. Continuing Education for Bail Bondsmen
 - 365:25-5-2. Definitions [AMENDED]
 - 365:25-5-4. Application for course approval [AMENDED]
 - 365:25-5-5. Approval or denial of course; certificate of completion [AMENDED]
 - 365:25-5-6. Proof of completion; video courses [AMENDED]
 - 365:25-5-9. Severability provision [REVOKED]
 - Part 5. General Provisions Pertaining to Bail Bondsmen
 - 365:25-5-32. Examination fees [REVOKED]
 - 365:25-5-38. Ten defendant limit [REVOKED]

- Part 7. Specific Financial Circumstances Warranting Release of Professional Deposit
 - 365:25-5-50. Authority and scope [REVOKED]
- Subchapter 7. Companies
 - Part 3. Redomestication
 - 365:25-7-10. Purpose [REVOKED]
 - 365:25-7-11. Application to become domestic insurer, form [AMENDED]
 - Part 5. Oklahoma Insurance Holding Company System Regulatory Act
 - 365:25-7-21. Severability provision [REVOKED]
 - 365:25-7-23. Forms: general requirements [AMENDED]
 - Part 7. Companies in Hazardous Financial Condition
 - 365:25-7-40. Authority [REVOKED]
 - 365:25-7-45. Separability [REVOKED]
 - Part 11. Credit for Reinsurance
 - 365:25-7-65. Credit for reinsurance- Reinsurers maintaining trust funds [AMENDED]
 - 365:25-7-66. Credit for reinsurance required by law [AMENDED]
 - 365:25-7-67. Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of 365:25-7-62 through 66 and 365:25-7-73 [AMENDED]
 - 365:25-7-68. Trust agreements qualified under Section 365:25-7-67 [AMENDED]
 - 365:25-7-70. Reinsurance contract [AMENDED]
 - 365:25-7-72. Letters of credit qualified under 365:25-7-67 [AMENDED]
 - 365:25-7-73. Credit for reinsurance- certified reinsurers [AMENDED]
 - 365:25-7-74. Credit for reinsurance- reciprocal jurisdiction [NEW]
 - Part 19. Annual Financial Reporting
 - 365:25-7-102. Definitions [AMENDED]
 - 365:25-7-106. Qualifications of independent certified public accountant [AMENDED]
 - Part 21. Insurance Business Transfers [NEW]
 - 365:25-7-1. Diagram [NEW]
 - 365:25-7-2. Timeline [NEW]
 - 365:25-7-3. Independent expert documentation [NEW]
 - 365:25-7-4. Notice [NEW]
 - Part 23. Term and Universal Life Insurance Reserve Financing [NEW]
 - 365:25-7-130. Authority [NEW]
 - 365:25-7-131. Purpose and Intent [NEW]
 - 365:25-7-132. Applicability [NEW]
 - 365:25-7-133. Exemptions from this regulation [NEW]
 - 365:25-7-134. Definitions [NEW]
 - 365:25-7-135. The Actuarial Method [NEW]
 - 365:25-7-136. Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation [NEW]
 - 365:25-7-137. Severability [NEW]
 - 365:25-7-138. Prohibition against avoidance [NEW]
 - 365:25-7-139. Effective date [NEW]

Notices of Rulemaking Intent

- Subchapter 9. Prepaid Funeral Benefits
365:25-9-1. Purpose [REVOKED]
365:25-9-2. Contract approval [AMENDED]
365:25-9-3. Forms [AMENDED]
365:25-9-7. Severability provision [REVOKED]
- Subchapter 11. Viatical Settlements Regulation
365:25-11-1. Approval of viatical settlement contracts by Commissioner pursuant to 36 O.S. § 4055.5 [REVOKED]
365:25-11-4.1. Standards for evaluation of reasonable payments for terminally ill insureds [AMENDED]
365:25-11-6. General Rules [AMENDED]
365:25-11-9. Insurance company practices [AMENDED]
- Subchapter 15. Captive Insurance Companies Regulation
365:25-15-3. Annual Audit [AMENDED]
365:25-15-12. Acquisition of control of or merger with domestic company [REVOKED]
365:25-15-13. Change of business [AMENDED]
365:25-15-14. Prior approval [AMENDED]
365:25-15-25. Confidentiality [NEW]
- Subchapter 17. Consumer Protection in Annuity Transactions Regulation
365:25-17-1. Purpose [AMENDED]
365:25-17-2. Scope [AMENDED]
365:25-17-4. Exemptions [AMENDED]
365:25-17-5. Definitions [AMENDED]
365:25-17-7. Duties of insurers and of insurance producers [AMENDED]
365:25-17-8. Mitigation of responsibility [AMENDED]
365:25-17-9. Recordkeeping [AMENDED]
365:25-17-10. Effective date [NEW]
- Subchapter 19. Annuity Disclosure Regulation
365:25-19-2. Authority [REVOKED]
365:25-19-8. Separability [REVOKED]
365:25-19-9. Effective Date [REVOKED]
- Subchapter 21. Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities
365:25-21-6. Effective date [REVOKED]
- Subchapter 23. Cemetery Merchandise Trusts
365:25-23-1. Purpose [REVOKED]
365:25-23-3. Contract approval [AMENDED]
365:25-23-4. Forms [AMENDED]
365:25-23-6. Surety bond [REVOKED]
- Subchapter 27. Military Sales Practices Regulation
365:25-27-3. Authority [REVOKED]
365:25-27-8. Severability [REVOKED]
- Subchapter 29. Pharmacy Benefit Managers
365:25-29-1. Purpose [REVOKED]
365:25-29-2. Scope [REVOKED]
365:25-29-3. Authority [REVOKED]
365:25-29-4. Definitions [AMENDED]
365:25-29-6. Surety bond [AMENDED]
365:25-29-7.1. Retail pharmacy network access-audit [AMENDED]
365:25-29-9. Contractual requirement [AMENDED]
- 365:25-29-10. Penalty for noncompliance [AMENDED]
365:25-29-11. "Doing pharmacy benefits management business in this state" defined-venue-exceptions [AMENDED]
365:25-29-12. Commissioner's authority - advisory committee [REVOKED]
365:25-29-13. Claims payment [AMENDED]
365:25-29-15. Examinations of PBMs and health insurers [AMENDED]
365:25-29-16. Transparency requirements and aggregate reporting [NEW]
- Subchapter 30. Professional Employer Organizations
365:25-30-3. Authority [REVOKED]
- Appendix E. Application to Withdraw Funds Deposited for Prepaid Funeral Expenses [REVOKED]
Appendix F. Buyers Application to Terminate Contract or Withdraw Funds Previously Deposited for Prepaid Funeral Benefits under a Non-Specified or Guaranteed Contract [REVOKED]
Appendix G. Annual Report [REVOKED]
Appendix H. Annual Statement of Financial Condition (Reconciliation of Trust Accounts) [REVOKED]
Appendix U. Informational Brochure to be Provided to a Prospective Viator at First Contact Pursuant to O.A.C. 365-25-11-6(A) [REVOKED]
Appendix V. Verification of Coverage for Life Insurance Policies [REVOKED]
Appendix W. Payouts for Insureds Who Are Terminally Ill [REVOKED]
Appendix Z. Notice to Employees Concerning Qualified Employer [REVOKED]
- SUMMARY:**
365:25-1-1. Revoked due to Governor's rule regulation EO2022-03.
365:25-1-2. Revoked due to Governor's rule regulation EO2022-03.
365:25-3-1. Removes requirement for earthquake continuing education for producers, and updates language from statute.
365:25-3-12. Removes Insurance Consultant due to legislation from 2022. Removes language duplicative of statute due to Governor's rule regulation EO2022-03.
365:25-3-14. Removes requirement for earthquake continuing education for adjusters. Removes language due to Governor's rule regulation EO2022-03.
365:25-3-15. Updates statutory citation in rules.
365:25-3-21. Adds appropriate "standards of conduct" to training.
365:25-5-2. Removes Association definition as we are adding Course Provider.
365:25-5-4. Updates Association with Course Provider.
365:25-5-5. Updates Association with Course Provider
365:25-5-6. Updates Association with Course Provider
365:25-5-9. Revoked due to Governor's rule regulation EO2022-03.

- 365:25-5-32. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-5-38. Revoked due to changes in statute in 2022.
- 365:25-5-50. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-7-10. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-7-11. Updates rule to require electronic filing.
- 365:25-7-21. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-7-23. Updates rule to require electronic filing and allow electronic signatures.
- 365:25-7-40. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-7-45. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-7-65. Updates statutory citations from emergency rule.
- 365:25-7-66. Updates statutory citations from emergency rule.
- 365:25-7-67. Updates statutory citations and language from emergency rule.
- 365:25-7-68. Updates statutory citations from emergency rule.
- 365:25-7-70. Updates citations from emergency rule.
- 365:25-7-72. Updates citations from emergency rule.
- 365:25-7-73. Updates citations and requirements for financial statements from emergency rule.
- 365:25-7-74. Creates rules around Reciprocal Jurisdictions from emergency rule.
- 365:25-7-102. Updates citations within the rules.
- 365:25-7-106. Updates citations within the rules.
- 365:25-7-1. Describes what makes up a diagram.
- 365:25-7-2. Timeline submission.
- 365:25-7-3. Describes what is required to be submitted on the independent expert being nominated.
- 365:25-7-4. Describes what the notice shall include.
- 365:25-7-130. Provides authority for the rule.
- 365:25-7-131. Provides the purpose and intent of the rule.
- 365:25-7-132. Provides references and applicability of the rule.
- 365:25-7-133. Sets forth any exemptions from the rule.
- 365:25-7-134. Sets forth the definitions for the rule.
- 365:25-7-135. Sets forth the actuarial method to be used in compliance with the law and rule.
- 365:25-7-136. Sets forth requirements for exemption and remediation.
- 365:25-7-137. Sets forth severability clause.
- 365:25-7-138. Sets forth avoidance prohibition.
- 365:25-7-139. Sets an effective date for the new rule changes.
- 365:25-9-1. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-9-2. Removes requirement for original copies to be submitted.
- 365:25-9-3. Updates the requirements for prepaid funeral benefits permit and the forms associated.
- 365:25-9-7. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-11-1. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-11-4.1. Updates form language.
- 365:25-11-6. Updates form language.
- 365:25-11-9. Updates form language.
- 365:25-15-3. Strikes manual from rule.
- 365:25-15-12. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-15-13. Adds effective date of business plan changes.
- 365:25-15-14. Updates form language.
- 365:25-15-25. Adds a confidentiality clause for Captives that is similar to other insurance companies.
- 365:25-17-1. Adds "best interest" language for consumers.
- 365:25-17-2. Makes updates to align with best interest changes.
- 365:25-17-4. Updates recommendation to transaction to align with model law.
- 365:25-17-5. Updates definitions to align with model law.
- 365:25-17-7. Updates language to add requirements for "best interest" language from model law.
- 365:25-17-8. Updates language to follow model law.
- 365:25-17-9. Updates disclosures required.
- 365:25-17-10. Adds an effective date for this rule.
- 365:25-19-2. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-19-8. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-19-9. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-21-6. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-23-1. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-23-3. Remove language requiring original documentation.
- 365:25-23-4. Updates language on forms and removes reporting requirement.
- 365:25-23-6. Removes reporting requirement.
- 365:25-27-3. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-27-8. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-29-1. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-29-2. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-29-3. Revoked due to Governor's rule regulation EO2022-03.
- 365:25-29-4. Updates to definitions and statutory citations.
- 365:25-29-6. Updates statutory citations.

Notices of Rulemaking Intent

365:25-29-7.1. Updates directions for reporting requirements for audits and adds direction for geo access reports.

365:25-29-9. Clarifies requirements on contracts and MAC appeals.

365:25-29-10. Updates language related to penalties from legislation passed in 2022.

365:25-29-11. Updates language to align with statutes.

365:25-29-12. Revoked due to Governor's rule regulation EO2022-03.

365:25-29-13. Updates statutory citations and adds language related to complaints.

365:25-29-15. Updates examination rule to align with statutes.

365:25-29-16. Adds new language to assist with reporting requirement set forth in statute.

365:25-30-3. Revoked due to Governor's rule regulation EO2022-03.

Appendix E. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix F. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix G. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix H. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix U. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix V. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix W. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

Appendix Z. Updates rules to clarify that the documents required shall be submitted in accordance with the forms and in the manner prescribed by the Commissioner on the Departments website.

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on

January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Wednesday, January 4th, at 9:00 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Room 132, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, at the mailing address above on or before 5:00 p.m. on January 6, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Insurance Department's website at www.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. §303(D). A copy of the statement may be obtained at the physical address above and will be available on the Insurance Department's website at www.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-840; filed 11-7-22]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATION (HMO)

[OAR Docket #22-841]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

Subchapter 3. Financial

Part 3. Holding Company System

365:40-3-17. Forms; general requirements

SUMMARY:

365:40-3-17. Updated to allow for electronic filings, electronic signatures and electronic statements.

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

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RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address above and will be available on the Insurance Department's website at www.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-841; filed 11-7-22]

**TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS**

[OAR Docket #22-842]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

600:10-1-6. Experience prerequisite [AMENDED]

600:10-1-12. Inactive status- annual fee payment [AMENDED]

SUMMARY:

600:10-1-6. Adds language waiving the fee for military personnel and their spouses. It also redacts the third party letter of verification.

600:10-1-12. Adds language for a notification process to the Board if they want their license to be placed in inactive status.

AUTHORITY:

Real Estate Appraiser Board; 59 O.S., § 858-829

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Friday, January 6th, 2023 at 9:30 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:25am.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, at the mailing address above on or before 5:00pm on January 6, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Office of the Real Estate Appraiser Board, within the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Real Estate Appraiser Board website located at www.reab.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address above and will be available on the Real Estate Appraiser Board website located at www.reab.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-842; filed 11-7-22]

Notices of Rulemaking Intent

TITLE 600. REAL ESTATE APPRAISER BOARD CHAPTER 15. DISCIPLINARY PROCEDURES

[OAR Docket #22-843]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

600:15-1-15. Conditions during suspension [AMENDED]

SUMMARY:

600:15-1-15. Removed unnecessary rule language pursuant to the Governor's EO2022-03.

AUTHORITY:

Real Estate Appraiser Board; 59 O.S., § 858-829

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Friday, January 6th, 2023 at 9:30 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:25am.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, at the mailing address above on or before 5:00pm on January 6, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Office of the Real Estate Appraiser Board, within the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Real Estate Appraiser Board website located at www.reab.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address above and will be available on the Real Estate Appraiser Board website located at www.reab.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-843; filed 11-7-22]

TITLE 600. REAL ESTATE APPRAISER BOARD CHAPTER 30. APPRAISAL MANAGEMENT COMPANY REGISTRATION

[OAR Docket #22-844]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking

PROPOSED RULES:

600:30-1-5. Renewal process [AMENDED]

600:30-1-8. Background investigations [AMENDED]

SUMMARY:

600:30-1-5. Updates the language to better clarify the application process.

600:30-1-8. Updates the language to clarify a background is done on each owner.

AUTHORITY:

Real Estate Appraiser Board; 59 O.S., § 858-829

COMMENT PERIOD:

Written or oral comments regarding the proposed rule amendment shall be received on or before 5:00 p.m. on January 6, 2023. Comments shall be directed to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, 400 Northeast 50th Street, Oklahoma City, 73105.

PUBLIC HEARING:

A public hearing regarding the proposed rule amendments will be held Friday, January 6th, 2023 at 9:30 a.m. at the Oklahoma Insurance Department, 400 NE 50th Street, Oklahoma City, OK 73105. Anyone who wishes to speak must sign in at the door by 9:25am.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Ashley Scott, Government and Community Affairs Director, Oklahoma Insurance Department, at the mailing address above on or before 5:00pm on January 6, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rule amendments may be inspected at the Office of the Real Estate Appraiser Board, within the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Copies of the rules may also be inspected and obtained on the Real Estate Appraiser Board website located at www.reab.oid.ok.gov.

RULE IMPACT STATEMENT:

A rule impact statement will be available on and after December 15, 2022, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained at the physical address above and will be available on the Real Estate Appraiser Board website located at www.reab.oid.ok.gov.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

[OAR Docket #22-844; filed 11-7-22]

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

[OAR Docket #22-786]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 23. Oklahoma Higher Learning Access Program

610:25-23-2. Eligibility of participants [AMENDED]

SUMMARY:

During the 2022 Legislative session, the Oklahoma Legislature passed and the Governor signed into law SB 1673, which modifies the Oklahoma Higher Learning Access Program ("Oklahoma's Promise"). These rules implement the provisions of SB 1673 by modifying the family income limit for students applying for Oklahoma's Promise. Beginning in the 2022-2023 school year, students are eligible to enroll in the program if the federal adjusted gross income of the student's parent(s) does not exceed: \$60,000 per year for parents who have one or two dependent children; \$70,000 per year for parents who have three or four dependent children; or \$80,000 per year for parents who have five or more dependent children. These rule revisions also remove outdated language, update a citation and reorganize a paragraph for increased clarity.

AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §§ 2605 and 3206

COMMENT PERIOD:

Interested persons may submit written comments to Chris Turner Jr., Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, cturner@osrhe.edu, by 5:00 p.m., January 3, 2023.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S. § 303(B)(9), "persons may demand a hearing" by contacting Chris Turner Jr., Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104,

405-225-9289, cturner@osrhe.edu, by 5:00 p.m., January 3, 2023.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be made available at the office of the Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, and on the agency's website at <https://www.okhighered.org> on and after December 1, 2022.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be made available on the agency's website at <https://www.okhighered.org> on and after December 1, 2022.

CONTACT PERSON:

Chris Turner Jr., Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, 405-225-9289, cturner@osrhe.edu.

[OAR Docket #22-786; filed 10-31-22]

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

[OAR Docket #22-859]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Department of Transportation
730:1-5-2. Personnel policies [AMENDED]

SUMMARY:

The proposed amendment is needed to bring the rule into compliance with changes in the law. The amendment removes references to Merit Protection Commission and replaces it with reference to the Human Capital Management Act and rules.

AUTHORITY:

69 O.S. 2021, §§ 301, 306, & 74 O.S. §840-1.7; Oklahoma Transportation Commission.

COMMENT PERIOD:

Persons wishing to present their comments or view in writing may do so before 5:00 p.m. on December 31, 2022, to Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison, 200 N.E. 21st, Oklahoma City, OK 73105 or at lendres@odot.org.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison,

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at (405) 521-2681 or lendres@odot.org no later than 5:00 p.m. on December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Department of Transportation, Lisa Erickson Endres, Assistant General Counsel, 200 N.E. 21st Street, Oklahoma City, OK 73105 or a request for a copy of the rules can be sent electronically to lendres@odot.org.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is being prepared and will be available for review on or before December 15, 2022, at the above address or on the ODOT website beginning on December 15, 2022.

CONTACT PERSON:

Lisa Erickson Endres, (405) 521-2681 or lendres@odot.org

[OAR Docket #22-859; filed 11-8-22]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #22-860]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Design Policies and Specifications
730:30-3-2. Standard specifications [AMENDED]

SUMMARY:

The proposed amendment is needed to update the rule so that it references the correct version of the "Standard Specifications for Highway Construction" manual that is currently used by the Department.

AUTHORITY:

69 O.S. 2021, §§ 301, 701; Oklahoma Transportation Commission.

COMMENT PERIOD:

Persons wishing to present their comments or view in writing may do so before 5:00 p.m. on December 31, 2022, to Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison, 200 N.E. 21st, Oklahoma City, OK 73105 or at lendres@odot.org.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison, at (405) 521-2681 or lendres@odot.org no later than 5:00 p.m. on December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Department of Transportation, Lisa Erickson Endres, Assistant General Counsel, 200 N.E. 21st Street, Oklahoma City, OK 73105 or a request for a copy of the rules can be sent electronically to lendres@odot.org.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is being prepared and will be available for review on or before December 15, 2022, at the above address or on the ODOT website beginning on December 15, 2022.

CONTACT PERSON:

Lisa Erickson Endres, (405) 521-2681 or lendres@odot.org

[OAR Docket #22-860; filed 11-8-22]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 35. MAINTENANCE AND CONTROL OF STATE HIGHWAY SYSTEM

[OAR Docket #22-861]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Maintenance
730:35-1-4. Maintenance responsibilities [AMENDED]
Subchapter 7. Traffic Control Devices
730:35-7-3. Traffic control responsibilities [AMENDED]
Subchapter 13. Freeway Signage Supplement Guide Signs
730:35-13-4. Tourist oriented directional signs (TODS) [AMENDED]

SUMMARY:

The proposed amendments are needed to bring the rules into compliance with existing law regarding directional signs and to remove outdated language that unnecessarily constricts ODOT's authority to perform certain maintenance and traffic control responsibilities allowed by statute.

AUTHORITY:

69 O.S. 2021, §§ 301, 303, 304, 1502; HB 3243 effective Nov. 1, 2022, *repealing* 74 O.S. §§ 2284, 2285; Oklahoma Transportation Commission.

COMMENT PERIOD:

Persons wishing to present their comments or view in writing may do so before 5:00 p.m. on December 31, 2022, to Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison, 200 N.E. 21st, Oklahoma City, OK 73105 or at lendres@odot.org.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing"

by contacting Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison, at (405) 521-2681 or lendres@odot.org no later than 5:00 p.m. on December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Department of Transportation, Lisa Erickson Endres, Assistant General Counsel, 200 N.E. 21st Street, Oklahoma City, OK 73105 or a request for a copy of the rules can be sent electronically to lendres@odot.org .

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is being prepared and will be available for review on or before December 15, 2022, at the above address or on the ODOT website beginning on December 15, 2022.

CONTACT PERSON:

Lisa Erickson Endres, (405) 521-2681 or lendres@odot.org

[OAR Docket #22-861; filed 11-8-22]

**TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 45. PUBLIC TRANSPORTATION
PROJECT DEVELOPMENT ASSISTANCE**

[OAR Docket #22-862]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

730:45-1-3. Administration [AMENDED]

730:45-1-4. Use of funds [AMENDED]

SUMMARY:

The proposed amendments are needed to update the rules and bring them into compliance with statutory changes that renamed the Department's program division to the Office of Mobility and Public Transit Division and to clarify how the Department can use funds

AUTHORITY:

69 O.S. 2021, §§ 301, 322, 323, 324, 4002, 4005 and 4031, 4032, 4033, 4034, 4035; Oklahoma Transportation Commission.

COMMENT PERIOD:

Persons wishing to present their comments or view in writing may do so before 5:00 p.m. on December 31, 2022, to Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison, 200 N.E. 21st, Oklahoma City, OK 73105 or at lendres@odot.org.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Lisa Erickson Endres, ODOT Assistant General Counsel and Administrative Procedures Rulemaking Liaison,

at (405) 521-2681 or lendres@odot.org no later than 5:00 p.m. on December 31, 2022.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Department of Transportation, Lisa Erickson Endres, Assistant General Counsel, 200 N.E. 21st Street, Oklahoma City, OK 73105 or a request for a copy of the rules can be sent electronically to lendres@odot.org.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is being prepared and will be available for review on or before December 15, 2022, at the above address or on the ODOT website beginning on December 15, 2022.

CONTACT PERSON:

Lisa Erickson Endres, (405) 521-2681 or lendres@odot.org

[OAR Docket #22-862; filed 11-8-22]

**TITLE 785. OKLAHOMA WATER
RESOURCES BOARD
CHAPTER 1. ORGANIZATION AND
PROCEDURE OF OKLAHOMA WATER
RESOURCES BOARD**

[OAR Docket #22-846]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Organization, Meetings and Comprehensive Water Plan

785:1-3-1. Origin, composition and operations of the Board [AMENDED]

785:1-3-2. Purpose of the Board [AMENDED]

785:1-3-3. Offices of the Board [AMENDED]

Subchapter 5. Rules

785:1-5-3. Amending of rules or ~~Standards~~ by Board [AMENDED]

785:1-5-4. Petition requesting promulgation, amendment or repeal of a rule or ~~Standard~~ by others [AMENDED]

Subchapter 9. Time Periods for Permit and License Issuance and Denial

785:1-9-1. Time period for permit and license issuance or denial [AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("Board") is proposing to amend certain provisions of Chapter 1 of the Board's rules to conform to state statues and clarify agency procedures. All references to water quality standards are being removed as a result of Senate Bill 1325 (2022), which transfers the authority for the Water Quality Standards program to the Oklahoma Department of Environmental Quality ("ODEQ"). The current rules and any future amendments will

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be promulgated by ODEQ. Other amendments are being made to update the composition of the Board to reflect prior statutory changes and Board practice.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.1; 82 O.S., § 1085.2; Senate Bill 1325 (2022).

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 PM on January 17, 2023. Persons wishing to present oral comments to the Board may do so at the public hearing on January 17, 2023.

PUBLIC HEARING:

A public hearing will be held January 17, 2023, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the Board's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide, within the Comment Period from December 1, 2022 through January 17, 2023, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023 or Cris.Krittenbrink@owrb.ok.gov.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the Board's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below. The proposed amendments may also be viewed on the Board's web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800, Cris.Krittenbrink@owrb.ok.gov.

[OAR Docket #22-846; filed 11-7-22]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 4. RULES OF PRACTICE AND HEARINGS

[OAR Docket #22-847]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Board Hearings

785:4-3-7. Notice and Scheduling of Hearings [NEW]

Subchapter 5. Pre-Hearing Actions and Proceedings

785:4-5-1. Pre-hearing discovery [AMENDED]

785:4-5-7. ~~Copies of motions~~ Motions, requests and orders [AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("Board") is proposing to amend Chapter 4 of the Board's rules to clarify procedures and promote consistency within the hearing process. The proposed rules will set a timeline for notice of hearings and a more detailed procedure for filing and responding to motions within an individual proceeding before the Board.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2.

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 PM on January 17, 2023. Persons wishing to present oral comments to the Board may do so at the public hearing on January 17, 2023.

PUBLIC HEARING:

A public hearing will be held January 17, 2023, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the Board's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide, within the Comment Period from December 1, 2022 through January 17, 2023, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023 or Cris.Krittenbrink@owrb.ok.gov.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the Board's office location at 3800 North

Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below. The proposed amendments may also be viewed on the Board's web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800, Cris.Krittenbrink@owrb.ok.gov.

[OAR Docket #22-847; filed 11-7-22]

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

[OAR Docket #22-848]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 785:35-1-4. Violations and penalties [AMENDED]
 - 785:35-1-6. Well Drillers and Pump Installers Advisory Council [AMENDED]
- Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications
 - 785:35-5-3. Requirements for ~~multi-purpose~~ completion and plugging ~~report~~ reports [AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("Board") proposes to amend Chapter 35 of Title 785 of the Oklahoma Administrative Code ("OAC") as follows:

OAC 785:35-1-4 is proposed to be amended to increase the administrative penalty issued to contractors for failing to file completion and plugging reports. The purpose of the amendment is to increase compliance with reporting requirements.

OAC 785:35-1-6 is proposed to be amended to award continuing education units for time spent by the members of the Advisory Council meeting to perform their duties. The purpose of the amendment is to compensate Council members for their time, encourage participation in the duties of the Council, and motivate contractors to seek membership on the Council.

OAC 785:35-5-3 is proposed to be amended to specify requirements for well completion and plugging reports that must be submitted to the Board by the contractor. The purpose

of the amendment is to provide a record for the contractor to ensure that wells are being constructed to the standards of the Chapter. Complete well construction records are necessary for the Board to administer and appropriate water rights, study groundwater basins, and protect the groundwater from pollution and waste.

AUTHORITY:

Oklahoma Water Resources Board; 82.O.S. § 1085.2; 82 O.S. § 1020.16.

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 PM on January 17, 2023. Persons wishing to present oral comments to the Board may do so at the public hearing on January 17, 2023.

PUBLIC HEARING:

A public hearing will be held January 17, 2023, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the Board's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed at the Board's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge. The proposed rules may also be viewed on the Board web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800, Cris.Krittenbrink@owrb.ok.gov.

[OAR Docket #22-848; filed 11-7-22]

Notices of Rulemaking Intent

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS [REVOKED]

[OAR Docket #22-849]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [REVOKED]
785:45-1-1. Purpose [REVOKED]
785:45-1-2. Definitions [REVOKED]
785:45-1-3. Adoption and enforceability of the standards [REVOKED]
785:45-1-4. Testing procedures [REVOKED]
785:45-1-5. Revision procedures [REVOKED]
785:45-1-6. Errors and separability [REVOKED]
Subchapter 3. Antidegradation Requirements [REVOKED]
785:45-3-1. Purpose; antidegradation policy statement [REVOKED]
785:45-3-2. Applications of antidegradation policy [REVOKED]
Subchapter 5. Surface Water Quality Standards [REVOKED]
Part 1. General Provisions [REVOKED]
785:45-5-1. Declaration of policy; authority of Board [REVOKED]
785:45-5-2. Beneficial uses: existing and designated [REVOKED]
785:45-5-3. Beneficial uses: default designations [REVOKED]
785:45-5-4. Applicability of narrative and numerical criteria [REVOKED]
785:45-5-5. Water quality standard variance [REVOKED]
785:45-5-6. Compliance schedules [REVOKED]
785:45-5-7. Site-specific criteria [REVOKED]
Part 3. Beneficial Uses and Criteria to Protect Uses [REVOKED]
785:45-5-9. General narrative criteria [REVOKED]
785:45-5-10. Public and private water supplies [REVOKED]
785:45-5-11. Emergency public and private water supplies [REVOKED]
785:45-5-12. Fish and wildlife propagation [REVOKED]
785:45-5-13. Agriculture [REVOKED]
785:45-5-16. Primary Body Contact Recreation [REVOKED]
785:45-5-17. Secondary Body Contact Recreation [REVOKED]
785:45-5-18. Navigation [REVOKED]
785:45-5-20. Fish consumption [REVOKED]
Part 5. Special Provisions [REVOKED]
785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [REVOKED]

785:45-5-26. Mixing zones and zones of passage [REVOKED]
785:45-5-29. Delineation of NLW areas [REVOKED]
Subchapter 7. Groundwater Quality Standards [REVOKED]
785:45-7-1. Scope and Applicability; Purpose [REVOKED]
785:45-7-2. Groundwater Quality Antidegradation Policy [REVOKED]
785:45-7-3. Groundwater classifications, beneficial uses and vulnerability levels [REVOKED]
785:45-7-4. Criteria for groundwater quality protection [REVOKED]
785:45-7-5. Corrective action [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [REVOKED]
Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 2, Lower Arkansas River Basin [REVOKED]
Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 3, Upper Red River Basin [REVOKED]
Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 4, Lower Red River [REVOKED]
Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 5, Canadian River [REVOKED]
Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 6, Upper Arkansas River [REVOKED]
Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 7, Panhandle Region [REVOKED]
Appendix B. Areas With Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix D. Classifications for Groundwater in Oklahoma [REVOKED]
Appendix E. Requirements for Development of Site Specific Criteria for Certain Parameters [REVOKED]
Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (beginning October 1976 ending September 1983, except as indicated) [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]
Appendix I. Criteria for Groundwater Protection [REVOKED]

SUMMARY:

The Oklahoma Water Resources Board ("Board") is proposing to revoke Chapter 45 of the Board's rules. Senate

Bill 1325 (2022) transfers the authority for the Water Quality Standards program to the Oklahoma Department of Environmental Quality ("ODEQ"). The current rules and any future amendments will be promulgated by ODEQ.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; Senate Bill 1325 (2022).

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 PM on January 16, 2023. Persons wishing to present oral comments to the Board may do so at the public hearing on January 17, 2023.

PUBLIC HEARING:

A public hearing will be held January 17, 2023, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the Board's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide, within the Comment Period from December 1, 2022 through January 17, 2023, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023 or Cris.Krittenbrink@owrb.ok.gov.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the Board's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below. The proposed amendments may also be viewed on the Board's web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the Board's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800, Cris.Krittenbrink@owrb.ok.gov.

[OAR Docket #22-849; filed 11-7-22]

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

[OAR Docket #22-850]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 785:46-1-1. Purpose, scope and applicability [REVOKED]
 - 785:46-1-3. Procedural and substantive authority [AMENDED]
 - 785:46-1-4. Testing procedures [REVOKED]
 - 785:46-1-6. Determination of regulatory low flow [REVOKED]
- Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing [REVOKED]
 - 785:46-3-1. Applicability and scope [REVOKED]
 - 785:46-3-2. Dilutions for whole effluent toxicity testing [REVOKED]
 - 785:46-3-3. Sampling for whole effluent toxicity testing [REVOKED]
 - 785:46-3-5. Reasonable potential to exceed narrative toxicity criterion for Fish and Wildlife Propagation [REVOKED]
 - 785:46-3-6. Regulatory flow determination [REVOKED]
- Subchapter 5. Implementation of Numerical Criteria to Protect Fish and Wildlife From Toxicity Due to Conservative Substances [REVOKED]
 - 785:46-5-1. Applicability and scope [REVOKED]
 - 785:46-5-2. Regulatory flow determination [REVOKED]
 - 785:46-5-3. Reasonable potential [REVOKED]
 - 785:46-5-8. pH and hardness dependent toxicity [REVOKED]
- Subchapter 7. Implementation of Numerical Criteria to Protect Human Health From Toxicity Due to Conservative Substances [REVOKED]
 - 785:46-7-1. Applicability and scope [REVOKED]
 - 785:46-7-2. Determination and use of regulatory flow [REVOKED]
 - 785:46-7-3. Reasonable potential [REVOKED]
- Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use [REVOKED]
 - 785:46-9-1. Applicability and scope [REVOKED]
 - 785:46-9-2. Applicable mineral criteria [REVOKED]
 - 785:46-9-3. Regulatory flows [REVOKED]
 - 785:46-9-5. Reasonable potential [REVOKED]
- Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation [REVOKED]
 - 785:46-11-1. Applicability and scope [REVOKED]
 - 785:46-11-2. Applicable temperatures [REVOKED]
 - 785:46-11-3. Regulatory flows [REVOKED]

Notices of Rulemaking Intent

785:46-11-5. Reasonable potential [REVOKED]
785:46-11-6. Reasonable potential equations [REVOKED]
Subchapter 13. Implementation of Antidegradation Policy [REVOKED]
785:46-13-1. Applicability and scope [REVOKED]
785:46-13-2. Definitions [REVOKED]
785:46-13-3. Tier 1 protection; attainment or maintenance of an existing or designated beneficial use [REVOKED]
785:46-13-4. Tier 2 protection; maintenance and protection of Sensitive Water Supply-Reuse and other Tier 2 waterbodies [REVOKED]
785:46-13-5. Tier 2.5 protection; maintenance and protection of high quality waters, sensitive water supplies, and other tier 2.5 waterbodies [REVOKED]
785:46-13-6. Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters [REVOKED]
785:46-13-7. Protection for Appendix B areas [REVOKED]
785:46-13-8. Antidegradation review in surface waters [REVOKED]
Subchapter 15. Use Support Assessment Protocols [REVOKED]
785:46-15-1. Scope and Applicability [REVOKED]
785:46-15-2. Definitions [REVOKED]
785:46-15-3. Data Requirements [REVOKED]
785:46-15-4. Default protocols [REVOKED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [REVOKED]
785:46-13-6. Assessment of Primary Body Contact Recreation support [REVOKED]
785:46-15-7. Assessment of Public and Private Water Supply support [REVOKED]
785:46-15-8. Assessment of Agriculture support [REVOKED]
785:46-15-9. Assessment of Fish Consumption support [REVOKED]
785:46-15-10. Nutrients [REVOKED]
785:46-15-13.1. Assessment of Navigation support [REVOKED]
785:46-13-14. Assessment of Aesthetics support [REVOKED]
Subchapter 19. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation [REVOKED]
785:46-19-1. Applicability and scope [REVOKED]
785:46-19-2. Regulatory flows [REVOKED]
785:46-19-3. Reasonable potential determination [REVOKED]
Appendix B. Mean Hardness and PH by Stream Segment [REVOKED]
Appendix C. Index of Biological Integrity [REVOKED]

SUMMARY:

The Oklahoma Water Resources Board ("Board") is proposing to revoke Chapter 46 of the Board's rules. Senate

Bill 1325 (2022) transfers the authority for the Water Quality Standards program to the Oklahoma Department of Environmental Quality ("ODEQ"). The current rules and any future amendments will be promulgated by ODEQ.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; Senate Bill 1325 (2022).

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 PM on January 17, 2023. Persons wishing to present oral comments to the Board may do so at the public hearing on January 17, 2023.

PUBLIC HEARING:

A public hearing will be held January 17, 2023, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the Board's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide, within the Comment Period from December 1, 2022 through January 17, 2023, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2023 or Cris.Krittenbrink@owrb.ok.gov.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the Board's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below. The proposed amendments may also be viewed on the Board's web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the Board's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800, Cris.Krittenbrink@owrb.ok.gov.

[OAR Docket #22-850; filed 11-7-22]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 1. OPERATIONS AND
PROCEDURES**

[OAR Docket #22-799]

RULEMAKING ACTION:

Notice of proposed permanent rulemaking

PROPOSED RULES:

Subchapter 15. Hunter Education Rules

SUMMARY:

These rule changes allow the hunter education coordinator to recertify lapsed hunter education instructors as opposed to forcing lapsed instructors to go through the recertification process.

AUTHORITY:

Title 29 O.S., Section 3-103, 4-112(A), 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 6, 2023, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARING:

Date: January 5, 2023

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 8, 2022 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Nels Rodefled, Chief of Communication & Education Division, 405/521-3855 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #22-799; filed 11-1-22]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 25. WILDLIFE RULES**

[OAR Docket #22-800]

RULEMAKING ACTION:

Notice of proposed permanent rulemaking

PROPOSED RULES:

Subchapter 1. Hunter/Trapping on Oklahoma Tourism and Recreation Lands [AMENDED]

Subchapter 3. Hunting on Corps of Engineers Lands [AMENDED]

Subchapter 5. Migratory Bird Hunting Season [AMENDED]

Subchapter 7. General Hunting Seasons [AMENDED]

Subchapter 24. Import of Cervids [AMENDED]

Subchapter 30. Wildlife Depredation on Agricultural Crops [AMENDED]

Subchapter 37. Nuisance Wildlife Control Program [AMENDED]

SUMMARY:

Subchapter 1 - These rules will open portions of Keystone State Park for deer and waterfowl controlled hunts.

Subchapter 3 - These rules will open certain Corps of Engineers lands at Ft Gibson Lake and Webbers Falls Lock and Dam 16 to hunting with archery equipment and shotguns with pellets, will restrict hunting to archery equipment and shotguns with pellets, for safety reasons, on certain Corps of Engineers Lands at Webbers Falls Lock and Dam 16, and will close hunting on certain Corps of Engineers lands at Eufaula Lake.

Subchapter 5 - These rules will restrict waterfowl hunting on Corps of Engineers lands to daily blinds only.

Subchapter 7 - These rules will require anyone hunting with an air powered arrow rifle to possess a valid air powered arrow rifle permit, will extend squirrel season through February 28, make it legal to hunt with an air powered arrow rifle during any open rifle season, establish criteria for legally transporting an arrow rifle in a motorized vehicle, define legal bullets for rifles and handguns, remove minimum barrel length for handguns, provide definition for an air powered arrow rifle legal for hunting, prohibit hunting with an air powered arrow rifle during archery and muzzleloader seasons, and open the WRP of McClellan-Kerr to additional hunting opportunity.

Subchapter 24 - These rules will define restrictions on transport of cervid carcass parts from any area designated as a Selective Surveillance Area, and authorize the Commission to establish, by resolution, CWD response measures.

Subchapter 30 - These rules add beehives to the list of agricultural crops subject to procedures for handling wildlife depredation complaints.

Subchapter 37 - These rules add bears to the list of big game animals for which complaints must comply with the provisions defined in Title 800:25-30.

Notices of Rulemaking Intent

AUTHORITY:

Title 29 O.S., Section 3-101, 3-103, 3-312, 4-130, 5-213, 5-401, 5-406, 5-409; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m. on January 6, 2023, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARING:

Date: January 5, 2023
Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 8, 2022 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #22-800; filed 11-1-22]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 30. DEPARTMENT OF
WILDLIFE LANDS MANAGEMENT**

[OAR Docket #22-801]

RULEMAKING ACTION:

Notice of proposed permanent rulemaking

PROPOSED RULES:

Subchapter 1. Use of Department Managed Lands

SUMMARY:

The ODWC is in the process of constructing and renovating shooting ranges on ODWC owned and managed land, some of those ranges will contain an archery range. This establishes rules for those archery ranges.

These rules change the camping restrictions on Okmulgee WMA to allow angler camping during the period of October 1-February 15.

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m. on January 6, 2023, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARING:

Date: January 5, 2023
Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 8, 2022 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #22-801; filed 11-1-22]

Submissions to Governor and Legislature

Within 10 calendar days after adoption by an agency of proposed PERMANENT rules, the agency must submit the rules to the Governor and the Legislature. A "statement" of such submission must subsequently be published by the agency in the *Register*.
For additional information on submissions to the Governor/Legislature, see 75 O.S., Section 303.1 and 308.

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-783]

RULEMAKING ACTION:

Submission to Governor and Legislature

RULES:

- Subchapter 1. General Provisions
- 490:1-1-2. Definitions [AMENDED]
- Subchapter 7. Fees and Deposits
- 490:1-7-2. Schedule of fees [AMENDED]
- Subchapter 9. Continuing education
- 490:1-9-4. Continuing education requirements [AMENDED]

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

October 28, 2022

[OAR Docket #22-783; filed 10-31-22]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 10. LONG TERM CARE ADMINISTRATORS

[OAR Docket #22-784]

RULEMAKING ACTION:

Submission to Governor and Legislature

RULES:

- Subchapter 1. Licensing of Long Term Care Administrators
- 490:10-1-2.1. General requirements that must be met by each applicant [AMENDED]
- 490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR/ID) administrator (also known as nursing home administrator) [AMENDED]
- 490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RCAL) administrators [AMENDED]
- 490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators [AMENDED]
- 490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators [AMENDED]

- 490:10-1-4. Requirements for licensure by endorsement for long term care administrators [AMENDED]
- 490:10-1-4.1. Requirements for registration for licensure reciprocity for long term care administrators [NEW]
- Subchapter 3. Application for Long Term Care Administrators Licensure
- 490:10-3-1. Application for initial licensure, licensure by endorsement, or provisional license [AMENDED]
- 490:10-3-3. State Standards examination [AMENDED]
- 490:10-3-4. Admission to the State Standards and National Examinations [AMENDED]
- 490:10-3-5. Application for licensure/certification/registration renewal [AMENDED]
- Subchapter 5. Discipline
- 490:10-5-3. Disciplinary action [AMENDED]
- Subchapter 7. Administrator University
- 490:10-7-3. General provisions [AMENDED]

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

October 28, 2022

[OAR Docket #22-784; filed 10-31-22]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 15. LONG TERM CARE CERTIFIED ASSISTANT ADMINISTRATORS

[OAR Docket #22-785]

RULEMAKING ACTION:

Submission to Governor and Legislature

RULES:

- Subchapter 1. Certification of Long Term Care Assistant Administrators
- 490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for a Certified Assistant Administrator (CAA) [AMENDED]
- Subchapter 3. Application for Certification and Requirements for Continued Eligibility
- 490: 15-3-1. Application process [AMENDED]

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

October 28, 2022

[OAR Docket #22-785; filed 10-31-22]

Emergency Adoptions

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

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

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

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

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

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICES

[OAR Docket #22-817]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Ignition Interlock Devices, Service Centers, Technicians [NEW]

40:50-1-1.1. Definitions [AMENDED]

40:50-1-1.2. Purpose [NEW]

40:50-1-2. Device certification process [AMENDED]

40:50-1-3. Standards and specifications [AMENDED]

40:50-1-3.1. Violation reset [AMENDED]

40:50-1-3.2. Reporting requirements [AMENDED]

40:50-1-3.3. Lockout override [NEW]

Subchapter 3. Impaired Driving Accountability Program (IDAP) [NEW]

40:50-3-1.1. Definitions [NEW]

40:50-3-1.2. Purpose [NEW]

40:50-3-2. Application - Eligibility - Enrollment [NEW]

40:50-3-3. Program length - Program participation criteria - Calculation of active days [NEW]

40:50-3-4. Medical exemptions - Employer exceptions - Affordability accommodations [NEW]

40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022 [NEW]

40:50-3-5-1. Program completion criteria for participants enrolled prior to November 1, 2022 [NEW]

40:50-3-6. Appeal process [NEW]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759; 47 O.S. §6-212.5

ADOPTION:

September 27, 2022

EFFECTIVE:

Immediately upon Governor's approval or November 1, 2022, whichever is later.

APPROVED BY GOVERNOR:

November 1, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

International Organization for Standardization, standard "ISO 9001:2015(en) Quality management systems - Requirements"

Incorporating rules:

40:50-1-2

Availability:

8:00 a.m. to 4:30p.m., Monday through Friday at Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Avenue, Oklahoma City, OK 73136, 405-425-2460.

FINDING OF EMERGENCY:

A finding of emergency is hereby found to protect the public health, safety or welfare of the motoring public of Oklahoma roadways; to comply with deadlines in amendments to this agency's governing law pursuant to Senate Bill 366; and to avoid violation of state law.

GIST/ANALYSIS:

The adopted emergency rule amendments create the necessary program rules for the Impaired Driving Accountability Program statutorily transferred to the Board pursuant to Senate Bill 366. The emergency proposed rules add definitions, amend device certification requirements, add program enrollment requirements, add program length requirements, add program participation requirements, add program completion requirements, add or amend program violations, add affordability accommodations requirements, add medical exemption requirements, add employer exception requirements, and add an appeal process to IDAP.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

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 NOVEMBER 1, 2022, WHICHEVER IS LATER:

SUBCHAPTER 1. IGNITION INTERLOCK DEVICES, SERVICE CENTERS, TECHNICIANS

40:50-1-1.1. Definitions

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

"Alcohol" means Ethyl Alcohol, also called ethanol.

"Anti circumvention feature" means any feature or circuitry incorporated into the device that is designed to prevent activity that would cause the device not to operate as intended.

Emergency Adoptions

"Board" means the Administrative Offices of the Oklahoma Board of Tests for Alcohol and Drug Influence created by O.S. 47:759.

"Board en banc" means the sitting members of the Board as defined by O.S. 47:759 (A).

"Breath alcohol test" means the analysis of a person's expired alveolar breath to determine the alcohol concentration.

"Calibration" means the process of testing and adjusting a device to ensure accuracy.

"Camera" means a separate device to capture photos as required in this Chapter.

"Circumvention" means to bypass the correct operation of an interlock device by starting the vehicle, by any means, without first providing a breath alcohol test or passing a providing a negative result confirmatory test.

"Confirmatory test" means a breath alcohol test required in response to a circumvention.

"Certification" means a status granted by the Board that permits a manufacturer to distribute a device in the state of Oklahoma.

"Data storage system" means a recording of all events monitored by the device.

"Director" means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

"Fee" means a non-refundable administrative fee.

"Free restart" means a function of a device that will allow a vehicle to be restarted under the requirements in this title, without having to complete another breath alcohol test.

"Ignition interlock device" means a mechanism, which may include a camera, that prevents a vehicle from starting when the breath alcohol concentration of a breath alcohol test meets or exceeds the startup set point. Also referred to as "device".

"Installation Authority" means the Oklahoma agency or entity by statute or order requiring or authorizing installation of a device.

"Ignition Interlock Maintenance and Calibration Fee" means the fee collected from the participant, at the time of the performing calibration and maintenance as required by this title. This fee is to be remitted to the Board of Tests.

"License" means the permission granted by the Board to engage in specific activities of the ignition interlock program.

"Manufacturer" means the actual producer of the device.

"Manufacturer representative" means the individual designated by the manufacturer to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board with respect to device certification.

"Monitor" means the agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding ignition interlock program participants.

"Negative result" means a breath alcohol test result indicating the alcohol concentration is less than the specific point value for the purpose specified.

"Operable vehicle" means a motor vehicle with ability to drive forward under its own power and steer and can be legally driven on public roadways.

"Penalty Fail" means a breath alcohol test resulting in a positive result that meets or exceeds the specific point value for the purpose specified.

"Permanent lockout" means a condition wherein the device will not allow a breath alcohol test and therefore will not allow the vehicle to be started.

"Positive result" means a breath alcohol test result indicating the alcohol concentration meets or exceeds the specific point value for the purpose specified.

"Power violation" means failure to provide power to an Ignition Interlock device installed in a vehicle for a period of twenty-four (24) hours or more.

"Proper Record Maintenance" means the manufacturer's complete records on every participant for a period of five (5) years from the date of removal including, but not limited to, all data retrieved from the data storage system of a device. The Board, or its designee, shall have access to any and all records.

"Reciprocity" means the process by which the Board may defer to a foreign state's device standards and specifications when an interlock participant is required to meet an interlock requirement for more than one state simultaneously.

"Reference sample device" means any alcohol breath testing external control or device approved for use by the Board.

"Retest" means a breath alcohol test or tests required in accordance with O.A.C. 40:50-1-3(e).

"Retest violation" means failure to deliver a negative breath alcohol test result within the time frame prescribed by these rules.

"Startup set point" means an alcohol concentration at which, or above, the device would prevent the vehicle from starting.

"Startup test" means a breath alcohol test provided before the vehicle is started.

"Tampering" means any act or attempt to adjust, obscure, alter, interfere, disable, defeat or circumvent the installation or operation of the device and/or camera.

"Technical non-compliance" means the failure of the device to comply with one or more provisions of this title with regard to device performance that does not affect the device's ability to respond appropriately to a negative breath test or a breath alcohol test required by 40:50-1-3-(c), (e), or (g), or the ability of the device to satisfy the requirements of 40:50-1-3(b)(1) or 40:50-1-3(f).

"Vendor" means a licensed ignition interlock technician designated by the Manufacturer representative of a certified device to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board, excluding matters related to device certification.

40:50-1-1.2. Purpose

The rules in this chapter relate to the administration and regulation of ignition interlock devices, service centers, and technicians pursuant to the provisions of Title 47 O.S., Sections 751-761 and 47 O.S. §6-212.5.

40:50-1-2. Device certification process

- (a) No device may be used in the state of Oklahoma unless it has been approved by the Board in accordance with the requirements stated herein.
- (b) A list of approved device models shall be maintained by the Board and available for public review at the administrative office of the Board during regular business hours or by accessing the Board website at www.ok.gov/bot.
- (c) A manufacturer representative seeking certification of a device shall:
 - (1) Complete an application for certification of an ignition interlock device and remit the appropriate fee in accordance with procedures established by the Board.
 - (2) Provide proof, as deemed appropriate by the Board, the device for which certification is being sought in Oklahoma meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications (78 FR 26849).
 - (3) Provide a current manufacturer's ISO 9001:2015 certification issued by an accredited registrar within the scope requirements provided by the Board.
 - (34) Provide a certificate of insurance, issued by an insurance company authorized to transact business in Oklahoma, specifying:
 - (A) A product liability policy with a current effective date;
 - (B) The name and model number of the device model covered by the policy;
 - (C) Policy coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate;
 - (D) The manufacturer as the insured and the state of Oklahoma as an additional insured;
 - (E) Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device; and
 - (F) The manufacturer will notify the Board immediately upon notice of cancellation of the product liability policy.
 - (45) Provide a schedule of all fees that may be charged to a participant. A participant shall not be imposed or required to pay any unscheduled fee(s). Such submission of schedule of fees shall be on an approved form provided by the Board. Any modification to the schedule of fees shall be submitted to the Board at least thirty (30) days prior to implementation.
 - (56) Devices shall use fuel cell technology for breath alcohol testing and a camera in accordance with the requirements in this Chapter.
 - (67) Agree to ensure any service performed on a device installed pursuant to an Oklahoma Installation Authority shall be in compliance with all requirements in this title.
 - (78) Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service, repair, use, removal, interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by this title at no

cost on behalf of the State of Oklahoma or any political subdivision.

(89) Shall authorize the Board of Tests to release records viewable by the agency to law enforcement representatives for investigative purposes on Board letterhead.

(910) Advise the Board whether the device for which certification is being sought in Oklahoma is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Oklahoma and if or when such action is or has been appealed in the other state and the outcome of the appeal.

(4011) Upon request of the Board, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti-circumvention features activated in a vehicle provided by the Board. Any service performed pursuant to this section, including but not limited to, installation, maintenance, calibration or removal shall be completed at no cost to the Board.

(412) Agree to only distribute Board approved solicitations related to the rules in this Chapter. Such requests for approval shall be submitted with a form provided and approved by the Board prior to distribution.

(13) Agree to strictly comply with the affordability provisions of these rules.

- (d) The Board may conduct compliance testing on the device submitted for certification, at any time.
- (e) Certification shall be for only one device model.
- (f) Approved devices shall be recognizable, as such, upon visual inspection.

40:50-1-3. Standards and specifications

- (a) The provisions in this subsection only apply to the use of a device pursuant to an Installation Authority.
- (b) The device shall:
 - (1) Permit a free restart of the motor vehicle within two (2) minutes after the engine has shut off without requiring a further breath alcohol test.
 - (2) Have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities and pictures for the period of time elapsed from one maintenance and calibration to the next. All daily driving activity records in this data storage system shall be maintained by the manufacturer or the licensed service center and shall be available to the Installation Authority, Monitor and/or the Board upon request.
 - (3) Display tamper seals and a warning label that states: "Any person attempting to physically disable, disconnect or wire around this device or who intentionally fails to return the device upon request by the owner may be guilty of a misdemeanor under Oklahoma law (47 O.S. §11-902a)." If the device consists of separate pieces (e.g. a handset and separate base unit) a separate warning label shall be placed on each piece.
 - (4) Effective November 1, 2022, incorporate a camera on all initial new installations that is not located in the handset and meets the following requirements:

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- (A) Each camera shall be mounted to the vehicle so that it does not obstruct the driver's view and provides a clear unobstructed view of the driver.
- (B) Has a sufficiently wide angle that it will be possible to determine whether the individual blowing into the device is seated in the driver's seat.
- (C) The technician shall take a reference image of the participant in the driver's seat during the installation appointment.
- (D) The camera shall operate in all lighting conditions and take an image of the driver with sufficient clarity and resolution to allow driver identification.
- (E) The camera shall capture an image on each of the following events:
 - (i) An attempted or successful breath alcohol test.
 - (ii) Each time the vehicle is started.
 - (iii) A circumvention.
 - (iv) A retest violation.
- (c) The startup set point value for the device shall be an alcohol concentration of 0.025 g/210L.
- (d) The ~~penalty fail point~~ positive result value for the device shall be an alcohol concentration of 0.025g/210L.
- (e) A retest feature is required while a vehicle's engine is in operation.
 - (1) The first retest shall be required at a randomly variable interval ranging from five (5) to fifteen (15) minutes after passing the ~~initial breath~~ startup test and starting the vehicle's engine. Subsequent retests shall be required at a randomly variable interval ranging from fifteen (15) to forty-five (45) minutes from the previously requested test for the duration of the travel.
 - (2) The device shall allow five (5) minutes for the retest to be completed.
 - (3) The retest set point value shall be an alcohol concentration of 0.025 g/210L.
 - (4) ~~A distinct~~ An audible and/or visual indicator shall come on to alert the driver that a retest is in progress. Once a retest is in progress, failure to deliver a negative result within the time frame allowed shall:
 - (A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.
 - (B) Record a retest violation in the data storage system, and
 - (C) Disable the free restart.
- (f) The device shall have an approved anti circumvention feature(s) activated at all times.
- (g) The device shall require a confirmatory test in response to a circumvention.
 - (1) The device shall allow two (2) minutes for the confirmatory test to be completed.
 - (2) The confirmatory test set point value shall be an alcohol concentration of 0.025 g/210L.
 - (3) An audible and/or visual indicator shall come on to alert the driver that a confirmatory test is in progress. Once a confirmatory test is in progress, failure to deliver a negative result within the time frame allowed shall:

- (A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.
- (B) Record a circumvention violation in the data storage system, and
- (C) Disable the free restart.
- (4) Once the confirmatory test is passed, the device shall enter the normal retest sequence as provided by these rules.
- (h) The device shall have Aa breath sample collection volume limit at or above 1.2 Liters unless an alternative configuration has been approved by the Board.
- (i) In addition to the standards and specifications listed herein, the Board or its designee may impose additional requirements, as needed, depending upon design and functional changes in device technology and to ensure that the device functions properly and reliably.

40:50-1-3.1. Violation reset

- (a) A violation reset shall be activated by any of the following:
 - (1) Three (3) ~~penalty fails~~ positive result startup tests, at startup, within a fifteen (15) minute time frame.
 - (2) A circumvention.
 - (3) A retest violation.
 - (4) A power violation, once power is restored to the device.
- (b) When a violation reset is activated, the device will initiate a unique audible and/or visual cue that will warn the driver that the device will enter a permanent lockout in five (5) days. This event will be uniquely recorded in the data storage system and will simultaneously start a countdown that culminates in the permanent lockout. A licensed ignition interlock technician shall remedy a permanent lockout in person unless the manufacturer has been approved for temporary lockout override issuance pursuant to O.A.C 40:50-1-3.3. However, the Director may approve standards and procedures for an override lockout. For the purposes of this section, override lockout means a method of overriding a lockout condition by providing a breath sample indicating a negative result.
- (c) Anytime a device is submitted pursuant to a violation reset the licensed ignition interlock technician shall perform a violation reset service consisting of, but not limited to:
 - (1) Performing maintenance and calibration in accordance with this title, and
 - (2) Retrieving all data contained in the data storage system. Proper record maintenance shall be ensured as required in this title.

40:50-1-3.2. Reporting requirements

- (a) Reportable violations are as follows:
 - (1) Three (3) ~~penalty fails~~ positive result startup tests, at startup, within a fifteen (15) minute time frame.
 - (2) A circumvention.
 - (3) ~~Three (3) A retest violations~~ violation constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.

- (4) ~~Removal of the device.~~
- (54) Tampering.
- (65) Permanent lockout.

(b) ~~If required by the Installation Authority and/or Monitor, Reportable reportable violations shall be reported to the Installation Authority and/or Monitor, in the form and/or format designated by the Board.~~ Installation Authority and/or Monitor, within five business days, banking holidays excepted, after a maintenance and calibration service, violation reset service or removal of the device.

(c) The manufacturer shall ensure proper record maintenance.

(d) The manufacturer shall report to the Board, in the form and format designated by the Board:

- (1) Device installations.
- (2) Device removals.
- (3) ~~Any reportable violations.~~ Any violation reset.
- (4) Maintenance and calibration performed on an ignition interlock device as required by these rules.

40:50-1-3.3. Lockout override

The Director may approve standards and procedures for a lockout override. For the purposes of this chapter, lockout override means a method of overriding a lockout condition by providing a breath sample indicating a negative result.

SUBCHAPTER 3. IMPAIRED DRIVING ACCOUNTABILITY PROGRAM (IDAP)

40:50-3-1.1. Definitions

Ignition Interlock Device definitions found in O.A.C. 40:50-1-1.1. shall also apply to IDAP inclusive of the additional definitions specific to the program listed below. The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Active ignition interlock day" means any twenty-four (24) hour period in which the device is installed in a Participant's Program Vehicle, is not in permanent lockout, and is provided the required operational power.

"IDAP" means the Impaired Driver Accountability Program established in 47 O.S. §6-212.5.

"IDAP Certificate of Completion" means the Director approved certificate issued by the Board to an IDAP participant confirming the person has met the criteria required for program completion.

"Program Fee" means the non-refundable statutory fee pursuant to 47 O.S. §6-212.5 plus any merchant or convenience fee for online or electronic transactions.

"Program participation" means a minimum of fifteen (15) breath alcohol tests each thirty (30) calendar day period from the date of installation completed by the participant.

"Program vehicle" means the vehicle in which an ignition interlock device is installed on behalf of a participant as reflected by the Installation Verification Form.

"Compliance download service" means a unique data retrieval service conducted by a licensed or approved technician at a licensed or approved service center that requires no maintenance and calibration services.

40:50-3-1.2. Purpose

The rules in this chapter relate to the administration of IDAP pursuant to the provisions of Title 47 O.S., Sections 751-761, 47 O.S. §6-205.1, and 47 O.S. §6-212.5.

40:50-3-2. Application - Eligibility - Enrollment

(a) The participant seeking enrollment into IDAP shall apply on a form approved by the Director. Applicants whose driving privileges are otherwise ineligible shall not be enrolled in IDAP and shall be directed to consult his/her driver licensing authority for assistance. Any person subject to driver license revocation who are otherwise eligible for participation in IDAP may enroll pursuant to this section.

(b) Fully enrolling in IDAP consists of:

- (1) Payment of the Program Fee to the Board; and
- (2) Presentation of an Ignition Interlock Installation Verification Form reflecting an Oklahoma approved device is currently installed on the vehicle the Participant will operate; and
- (3) Presentation of the signed "IDAP Participant's Agreement"; and
- (4) The Participant shall be responsible for reporting the required program length to the Board.

(c) The start date of the participant's program is the day the Board receives all documents and fees meeting IDAP enrollment criteria.

(d) Multiple program periods shall run consecutively.

(e) Participants may enroll in more than one (1) IDAP. A Participant must complete the program in which they are currently enrolled before commencing any subsequent program period. In no instance will a Participant's credit for time in one (1) IDAP be credited toward any other IDAP.

(f) The IDAP Participant agreement shall be signed by the Participant and shall include the following information:

- (1) Participant's full name as it appears on his/her driver license; and
- (2) Participant's driver license number; and
- (3) Participant's program length requirement as reflected in Service Oklahoma records; and
- (4) A list of Ignition Interlock Violations and criteria for program completion or failure as defined by the Board; and
- (5) An explanation of the consequences of violations of the Ignition Interlock Program; and
- (6) The date upon which the IDAP Participant Agreement was signed; and
- (7) Participant's signature.

(g) A confirmation of enrollment form approved by the Director shall be delivered to the participant via his/her preferred contact method upon fully enrolling. It is the participant's responsibility to provide his/her preferred contact method.

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40:50-3-3. Program length - Program participation criteria - Calculation of active days

- (a) **IDAP lengths.**
- (1) no less than one hundred eighty (180) active ignition interlock days and program participation criteria as determined by the Board for a first license revocation pursuant to 47 O.S. § 6-205.1(A)(1);
 - (2) no less than three hundred sixty-five (365) active ignition interlock days and program participation criteria as determined by the Board for a second license revocation pursuant to 47 O.S. § 6-205.1(A)(2);
 - (3) no less than seven hundred thirty (730) active ignition interlock days and program participation criteria as determined by the Board for a third and subsequent license revocation pursuant to 47 O.S. § 6-205.1(A)(3).
- (b) **Program participation criteria.** IDAP participants shall not receive credit toward his/her program length for any thirty (30) calendar day cycle the participant fails to meet the program participation criteria as defined in this subchapter. A compliance download service as defined in 40:50-3-1.1 may be needed to fulfill these criteria.
- (c) **Calculation of active ignition interlock days.** All IDAP participants shall meet a cumulative number of active ignition interlock days exceeding or equal to the program length required. A compliance download service as defined in 40:50-3-1.1 may be needed to establish satisfaction of these criteria.
- (d) The Director shall prescribe internal program review policies and procedures for all authorized Board personnel reviewing completion criteria.

40:50-3-4. Medical exemptions - Employer exceptions - Affordability accommodations

- (a) **Medical exemptions.**
- (1) only persons subject to a first license revocation pursuant to 47 O.S. § 6-205 are qualified to seek exemption and does not grant the individual driving privileges. Such individuals seeking medical exemption shall:
 - (A) submit a pulmonologist's certification indicating the person has a documented medical condition preventing the person from providing a breath sample of at least one and two-tenths (1.2) liters; and
 - (B) enroll in IDAP with the exception of an Installation Verification Form; and
 - (C) not operate, drive, or be in actual physical control of a motor vehicle; and
 - (D) complete the required program length.
 - (2) Participants denied medical exemption may appeal the denial in accordance with 40:50-3-6.
- (b) **Employer exceptions.**
- (1) only persons subject to a first license revocation pursuant to 47 O.S. § 6-205 are eligible for employer exceptions.
 - (A) IDAP participants must have a device installed upon any vehicle they may operate owned or leased, as reflected on the vehicle registration, by an employer of the person for use by the person, except

when the employer requests the ignition interlock device not be installed.

(B) Such request shall be in writing and notarized on the official letterhead of the employer and submitted by the employer to the Board; provided, a request shall not be accepted by the Board under the following circumstances:

(i) When the person is self-employed or owns part or all of the company or corporation, or exercises control over some part of the business which owns or leases the vehicle; or

(ii) When the person is employed by a relative who is within the first degree of consanguinity or who resides in the same household.

(2) Participants granted an employer exception are not relieved of the requirement to install an ignition interlock device on a vehicle as reflected on an Installation Verification Form. Such authorization for exception shall only apply to IDAP participants operating employer vehicles under the course and scope of employment. IDAP participants shall keep the approved exception on his or her person while operating the employer vehicle.

(3) Participants denied an employer exception may appeal the denial in accordance with 40:50-3-6.

(c) **Affordability accommodations.**

(1) Participants applying for affordability status for the purpose of the ignition interlock program shall be deemed to qualify for such status by showing valid proof that the person applying for accommodations is actively receiving benefits from one of the following state or federal public assistance programs listed below:

(A) Temporary Assistance for Needy Families (TANF)

(B) Supplemental Nutritional Assistance Program (SNAP)

(2) Participants meeting affordability requirements shall receive the following credit that shall be distributed into the participants account by the manufacturer not to exceed a frequency of \$25.00 per thirty (30) days.

(A) \$150.00 maximum credit for a first license revocation pursuant to 47 O.S. § 6-205; or

(B) \$300.00 maximum credit for a second license revocation pursuant to 47 O.S. § 6-205; or

(C) \$450.00 maximum credit for a third or subsequent license revocation pursuant to 47 O.S. § 6-205.

(3) A participant that does not remain compliant with respect to the IDAP program or device lease fees forgoes his/her affordability eligibility. The manufacturer may inquire with the Board whether the person still meets the affordability accommodations and qualifies for the credit.

(4) The participant shall provide the required documentation to the Board. Upon approval, the Board shall notify the manufacturer by providing notice to the designated manufacturer representative. No manufacturer is required to provide affordability accommodations to more than 10% of its active participants in the State of Oklahoma.

(5) The Board shall provide information on the agency website informing interlock customers about the affordability program and how a participant can qualify.

(6) Manufacturers shall not count coupons, rebates, refunds, discounts, or other financial inducements otherwise available to any customer as the credit required by these rules.

(7) Participants denied affordability accommodations may appeal the denial in accordance with 40:50-3-6.

40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022

(a) An IDAP Certificate of Completion shall be issued to participants meeting the following criteria:

(1) The participant has met the active ignition interlock day requirements pursuant to O.A.C. 40:50-3-3; and

(2) The participant has met the participation requirements pursuant to O.A.C. 40:50-3.3; and

(3) The last ninety (90) active ignition interlock days must be free of program and reportable violations found in 40:50-1-3.2 pursuant to 47 O.S. §6-212.5 A(4) for license revocations pursuant to 47 O.S. § 6-205.1.

(b) Upon reaching the tentative completion date provided to the participant in the confirmation of enrollment form, a participant is eligible to submit a request for an IDAP Certificate of Completion. A denial of IDAP Certificate of Completion notice shall be issued to participants whose requests do not meet criteria as defined in 40:50-3-5. Such notice shall contain the finding that caused the denial and a notice of right to appeal and shall be delivered to the participant via his/her preferred contact method. It is the participant's responsibility to provide his/her preferred contact method.

(c) Miscellaneous Program violations: An additional arrest for DUI/APC prior to completion of the Participant's IDAP, at the date of discovery by the Board, shall be treated as a violation and shall have the same weight as reportable violations found in 40:50-1-3.2 when evaluating the requirements for an IDAP Certificate of Completion.

(d) Program failure: Participants that are deemed to have failed the program or voluntarily discontinue participation in the program shall receive no credit for time served beginning from enrollment. Participants that fail the program or choose to discontinue participating in the program are authorized to re-enroll in IDAP. The following actions will result in program failure:

(1) removal of the device from the Program Vehicle and failure to reinstall a device in a substitute Program Vehicle within sixty (60) days; or

(2) medical exemption participants reported or found to be operating a motor vehicle during his/her required program length.

40:50-3-5.1. Program completion criteria for participants enrolled prior to November 1, 2022

A Certificate of Completion shall be issued to participants enrolled in IDAP prior to November 1, 2022 who have submitted an application for ignition interlock history and have met or exceeded his/her tentative program completion date as reflected in the records of Service Oklahoma. The IDAP participant shall be responsible for presenting required documentation to the Board.

40:50-3-6. Appeal process

(a) An appeal may be submitted to the Ignition Interlock Program Administrator for the following actions:

(1) denial for an IDAP completion certificate issued under the requirements in this subchapter; or

(2) a program failure; or

(3) a denial of eligibility for affordability accommodations; or

(4) a denial for medical exemption; or

(5) a denial for employer exceptions.

(b) Such request shall be:

(1) accompanied with all supporting documentation; and

(2) must be received at the administrative offices of the Board within thirty (30) calendar days after the date of denial is issued.

(c) Upon proper submission, the Ignition Interlock Program Administrator shall issue an administrative order sustaining or overruling the denial within thirty (30) calendar days.

(d) An appeal of the Ignition Interlock Program Administrator's order may be submitted to the Director.

(1) A request for appeal regarding the Ignition Interlock Program Administrator's order must be received at the administrative offices of the Board within thirty (30) calendar days after the date of order sustaining the denial.

(2) The Director shall issue a final administrative order sustaining or overruling the denial within thirty (30) calendar days.

(e) An appeal of a final administrative order of the Director may be made in accordance with the requirements in the Oklahoma Administrative Procedures Act, 75 O.S. 250, et seq.

[OAR Docket #22-817; filed 11-2-22]

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

[OAR Docket #22-771]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Introduction
252:606-1-1 [AMENDED]

Emergency Adoptions

252:606-1-2 [AMENDED]
Subchapter 3. Discharge Permitting Process for Individual and General Discharge Permits
252:606-3-6 [AMENDED]
Subchapter 5. Discharge Permit Requirements
252:606-5-1 [AMENDED]
252:606-5-4 [AMENDED]
Subchapter 8. Biosolids Requirements
252:606-8-2 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.
Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

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 1. INTRODUCTION

252:606-1-1. Purpose

(a) **Intent.** This Chapter sets the point source, biosolids (sewage sludge), and stormwater permitting standards for discharges to the waters of the State of Oklahoma from those facilities within the jurisdiction of the Oklahoma Department of Environmental Quality as specified in Title 27A O.S. § 1-3-101. This Chapter implements the Oklahoma Pollutant Discharge Elimination System Act, which begins at Title 27A O.S. § 2-6-201 of the Oklahoma Statutes. This Chapter applies to any person or entity that land applies biosolids or prepares it for firing in a biosolids (sewage sludge) incinerator, in addition to those facilities that discharge wastewater to waters of the state.

(b) **Other rules apply.** This Chapter applies in addition to other rules. This Chapter governs the effluent discharged from municipal wastewater treatment systems (constructed under OAC 252:656) and industrial wastewater treatment systems (constructed under OAC 252:616), and current DEQ Laboratory Accreditation rules. The discharges regulated by this Chapter must not cause a violation of the Oklahoma Water Quality Standards (OAC ~~785:45~~252:730).

(c) **Exclusion.** This Chapter does not apply to:

- (1) discharges from marine toilets, as prohibited by Title 63 O.S. § 4213;
- (2) discharges of dredge and fill material under the jurisdiction of the United States Corps. of Engineers under Section 404 of the Federal Clean Water Act. Water in a treatment system is OPDES Permit Schedule Violation not waters of the State of Oklahoma;
- (3) Septage. See OAC 252:645;
- (4) Biosolids pilot studies that are conducted by a qualified research institute familiar with the crops and soils of this state for the beneficial use of biosolids through land application. Such studies are subject to conditions imposed by the DEQ, including:
 - (A) the limitation of the total amount of biosolids used must be no more than 25 dry tons for any one project or 50 dry tons for all pilot studies approved by the DEQ for the same institute in the same year;
 - (B) compliance with:
 - (i) The metal ceilings established in Table 1 of 40 CFR § 503.13(b);
 - (ii) One of the vector attraction reduction alternatives; and
 - (iii) The pathogen reduction requirements of 40 CFR § 503.32(a);
 - (C) written approval from the DEQ Executive Director or his designee prior to the commencement of operations;
 - (D) the period during which biosolids may be applied to the land is eighteen 18 months or less, unless extended by the DEQ;
 - (E) notification to the DEQ of the cessation of land application at the site; and
 - (F) periodic reporting.

- (5) Biosolids co-fired in an incinerator with other wastes or for the incinerator in which biosolids and other wastes are co-fired are regulated under the appropriate Air Quality Rules. Other wastes do not include auxiliary fuel, as defined in 40 CFR § 503.41(b), fired in a sewage sludge incinerator.
- (6) Sludge generated at an industrial facility during the treatment of industrial wastewater, including sludge generated during the treatment of industrial wastewater combined with domestic sewage.
- (7) Use of biosolids determined to be hazardous in accordance with 40 CFR Part 261 which must be disposed of in a manner in accordance with the Oklahoma Hazardous Waste Management Act and rules promulgated thereunder;
- (8) Ash generated during the firing of biosolids in a sewage sludge incinerator;
- (9) Grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.
- (10) Biosolids with a concentration of Polychlorinated Biphenyl (PCB) equal to or greater than 10 milligrams per kilogram (10.0 mg/kg) of total solids (dry weight basis) may not be land applied under this Chapter. Disposal must be in accordance with OAC 252:515 ("Management of Solid Waste" rules) and applicable federal requirements under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*

252:606-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, have the following meaning unless the context clearly indicates otherwise:

- "**Accredited laboratory**" means a laboratory accredited through the DEQ laboratory accreditation program.
- "**Beneficial use**" means the use of biosolids or wastewater through land application for the purpose of soil conditioning, or crop or vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute the waters of the State of Oklahoma, the environment or pose a risk to human health.
- "**Best professional judgment**" or "**BPJ**" means the technical opinion developed by a permit drafter after consideration of all reasonably available and pertinent data or information which forms the basis for the terms and conditions of a discharge permit, and the use of sound engineering analysis of the industry, the nature and quantity of potential pollutants which may be produced and of the proposed treatment plant.
- "**Biosolids**" means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as amendments. This term is within the meaning of "sludge" referenced in 27A O.S. § 2-6-101(11). Biosolids are divided into the following classes:
 - (A) Class A Biosolid meets the pathogen reduction requirements of 40 CFR § 503.32 (a);

- (B) Class B Biosolid meets the pathogen reduction requirements of 40 CFR § 503.32 (b).
- "**Bypass**" means the intentional or unintentional diversion of waste streams from any portion of a treatment, disposal or collection facility.
- "**Compliance Testing**" means any chemical, physical or bacteriological tests conducted in accordance with permit requirements.
- "**Control tests**" means any chemical, physical or bacteriological tests, including visual observations, performed to aid in operational decisions and to control wastewater treatment system performance.
- "**CFR**" means the Code of Federal Regulations.
- "**CROMERR**" means the Cross-Media Electronic Reporting Rule.
- "**DEQ**" means the Oklahoma Department of Environmental Quality.
- "**Discharge point**" means the point at which pollutants, wastewater or stormwater enters waters of the state or become waters of the state.
- "**DMR**" means "Discharge Monitoring Report".
- "**EPA**" means the United States Environmental Protection Agency.
- "**Generator**" or "**operator**" means authorized person under whose ownership or management authority, biosolids are used or disposed.
- "**Impoundment**" or "**Surface impoundment**" have the same meaning used in OAC 252:616-1-2.
- "**Industrial user**" means "industrial users subject to categorical pretreatment standards" and "significant industrial users" as those terms are used in 40 CFR, Part 403.
- "**Land application**" means the application of biosolids onto a land surface; injection below land surface; or spreading biosolids onto land surface followed by incorporation into the soil. Land application does not include the disposal of biosolids in a municipal solid waste landfill permitted by the DEQ, or the use of Class A biosolids whose production is permitted by the DEQ.
- "**Listed metal**" means those metals listed in Tables I, II, and III of 40 CFR, Part 503.13.
- "**Loading rate**" means the amount (concentration or mass) of constituents or parameters applied to a unit area per application.
- "**NRCS**" means Natural Resources Conservation Service.
- "**OAC**" means Oklahoma Administrative Code.
- "**OS**" means Oklahoma Statutes.
- "**Oklahoma Water Quality Standards**" means the ~~Oklahoma Water Resources Board~~ DEQ rules (OAC 785:452:730) which classify waters of the state, designate beneficial uses for which the various waters of the state must be maintained and protected, and prescribe the water quality required to sustain designated uses.
- "**Operating records and reports**" means the daily record of data connected with the operation of the system compiled in a monthly report on forms approved by the DEQ.
- "**Prior converted cropland**" means those croplands as defined or used in the Federal Swampbuster Provisions located at Title 16, USC, §§ 3821 through 3823.

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"USC" means United States Code.

"USGS" means United States Geological Survey.

SUBCHAPTER 3. DISCHARGE PERMITTING PROCESS FOR INDIVIDUAL AND GENERAL DISCHARGE PERMITS

252:606-3-6. Compliance required

Applicants must comply with the terms of the permits that are issued. Permits may contain provisions more stringent than these rules in order to meet Oklahoma Water Quality Standards (OAC ~~785:45252:730~~), the Implementation of Oklahoma's Water Quality Standards (OAC ~~785:46252:740~~), the DEQ Water Quality Standards Implementation Plan (OAC 252:690), and the Water Quality Management Plan.

SUBCHAPTER 5. DISCHARGE PERMIT REQUIREMENTS

252:606-5-1. Terms and conditions of permits

(a) Terms and conditions of permits issued under this Chapter will include requirements necessary to assure compliance with the Oklahoma Water Quality Standards (OAC ~~785:45252:730~~), the Implementation of Oklahoma's Water Quality Standards (OAC ~~785:46252:740~~), the DEQ Water Quality Standards Implementation Plan (OAC 252:690), and the Water Quality Management Plan.

(b) Where applicable, the DEQ may require municipalities to adopt and enforce appropriate requirements for dischargers to storm sewers to cause compliance with municipally-held stormwater discharge permits.

(c) Where practicable and as deemed appropriate by the Executive Director and as applicable in the circumstances, any discharge permit, or authorization to discharge issued by the Executive Director under a General Permit, may contain appropriate terms, conditions, limitations and requirements related to protection of groundwater, for remediation of pollution, or for implementation of other programs under the jurisdiction of the DEQ.

252:606-5-4. Water quality standards variance

Approval for any variance allowed pursuant to the Oklahoma Water Quality Standards must be obtained directly from the ~~Oklahoma Water Resources Board and the permittee or applicant must submit written evidence of the same to the DEQ in a timely manner~~DEQ.

SUBCHAPTER 8. BIOSOLIDS REQUIREMENTS

252:606-8-2. Permit applications

A permit application to produce Class A or Class B biosolids must be typed or computer printed and include:

- (1) the name, address, and telephone number of the applicant or the applicant's authorized representative;
- (2) the name, mailing address, and telephone number of the generator or operator and the land applier, if different, and contact person from each source;
- (3) a brief description of the biosolids including a list of the major commercial or industrial facilities that discharge to the municipal treatment system;
- (4) a description of the use or disposal practices and locations of any sites for transfer of the biosolids for treatment, use, land application, and/or disposal;
- (5) laboratory test results of a representative soil sample from each proposed site in the permit application. The composite soil samples must be tested, and background levels set, for the metals listed in Tables 1 and 3 of 40 CFR § 503.13(b), pH, and the nutrients - nitrogen (N), ammonia (NH₄), nitrates (NO₃), potassium (K) and phosphorus (P);
- (6) a list of environmental state or federal permits held by the applicant; and
- (7) if a facility, generator, and/or land application site is located in the watershed of an Outstanding Resource Water as defined in OAC ~~785:45252:730~~, the Outstanding Resource Water shall be identified.

[OAR Docket #22-771; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #22-772]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions

252:611-1-1 [AMENDED]

252:611-1-2 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.
Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022 (Proposed)

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER

QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

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 1. GENERAL PROVISIONS

252:611-1-1. Purpose

The purpose of this Chapter is to protect, maintain and improve the quality of waters of the state, as set forth in Title 27A O.S. § 2-6-102 and to enforce and protect Oklahoma's Water Quality Standards (OAC ~~785:45~~252:730). This Chapter implements the broad authority of the DEQ over surface, ground and other waters of the state.

252:611-1-2. Definitions

In addition to definitions adopted by reference, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Board" means the Environmental Quality Board.

"Clean Water Act" or "CWA" means the federal Water Pollution Control Act, 33 U.S.C. § 251 *et seq.*, as amended.

"Code" means the Environmental Quality Code, 27A O.S. § 2-1-101 *et seq.*, as amended.

"CPP" means the continuing planning process documents required pursuant to this chapter and 40 CFR Part 130.

"DEQ" or "Department" means the Oklahoma Department of Environmental Quality.

"Discharge point" means the point at which wastes enter waters of the state or become waters of the state.

"EPA" means the United States Environmental Protection Agency.

"Oklahoma's Water Quality Standards" or "OWQS" or "Standards" means the rules promulgated by the DEQ at OAC 252:730, which classify waters of the state, designate the uses for which the various waters of the State shall be maintained and protected and prescribe the water quality standards required to sustain designated uses.

"Underground storage systems" means storage tanks, containers and other storage reservoirs, transfer lines, pumps, fittings, overflow prevention devices, and any associated anti-corrosion measures and/or leak prevention/detection systems, the volume of which is 10% or more beneath the surface of the ground.

[OAR Docket #22-772; filed 10-27-22]

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

[OAR Docket #22-773]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. Introduction
252:616-1-2 [AMENDED]
- Subchapter 9. Tank System Standards
252:616-9-1 [AMENDED]
- Subchapter 11. Land Application Standards
252:616-11-1 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203. Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these

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emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

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 1. INTRODUCTION

252:616-1-2. Definitions

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

"Beneficial use" means in the context of land application the use of sludge or wastewater through land application for the purpose of soil conditioning, crop vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute waters of the state of Oklahoma, the environment or pose a risk to human health.

"Berm" means a man-made barrier designed to control waste and/or stormwater within a surface impoundment or to retard or contain runoff in a given area.

"Bypass" means the intentional or unintentional diversion of waste streams from any portion of a facility.

"Cathodic protection" means protecting a metal from electrochemical corrosion or rusting by using it as the cathode of a cell with a sacrificial anode.

"Cell" means a part of a surface impoundment system that shares a vertical concrete wall with another part of the surface impoundment area.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Engineer" means a professional engineer registered in the state of Oklahoma.

"Flow-through surface impoundment" means a surface impoundment designed and constructed with an outfall structure which allows the controlled discharge of wastewater out of the impoundment.

"Freeboard" means the vertical distance from the surface water or sludge/solids level to the overflow elevation (outfall structure or the lowest part of the surrounding berm) in a surface impoundment.

"Hydraulic conductivity" means the coefficient of proportionality that describes the rate at which a fluid can move through a permeable medium. It is a function of both the medium and of the fluid flowing through it; also defined as the quantity of water that will flow through a unit cross-sectional area of porous material per unit of time under a hydraulic gradient of 1.00 (measured at right angles to the direction of flow) at a specified temperature.

"Industrial wastewater treatment permit" shall include any permit for construction, operation, treatment, storage or disposal required under this Chapter.

"Land application" means the controlled application of treated industrial wastewater or sludge onto the land surface for beneficial use.

"Liner" means a barrier which is designed, constructed and installed in a surface impoundment and which has appropriate chemical and physical properties to ensure that such structures control the seepage or release of waste and wastewater from the impoundment.

"Monitoring well" means all borings, wells, piezometers, or other means of retrieving a soil, waste, wastewater or vapor sample from the subsurface.

"Oklahoma Water Quality Standards" means the rules promulgated by the ~~Oklahoma Water Resources Board~~ DEQ and contained in OAC ~~785:45~~ 252:730 which classify waters of the state, designate beneficial uses for which the various waters of the State shall be maintained and protected, and prescribe the water quality standards required to sustain designated uses.

"OPDES" means the Oklahoma Pollution Discharge Elimination System Act at 27A O.S. § 2-6-201 *et seq.*

"Operator" means the person responsible for the maintenance and operation of a surface impoundment, or disposal or wastewater treatment system and responsible for keeping records and providing reports to the DEQ.

"Outfall" means the point where monitoring shall occur for the purpose of evaluating compliance with rules, permits or orders of the DEQ.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity.

"Permeability" means the rate at which liquids pass through soil or other materials in a specified direction.

"Receiving water" means that portion of any waters of the State into which wastewater is or may be released, leached, or discharged.

"Sanitary wastewater" means and includes but is not limited to wastewater from drinking fountains, showers, toilets, lavatories, and kitchens.

"Surface impoundment" means a native soil or lined basin either below or above ground level which is designed, maintained and/or operated to store, recycle, treat and/or dispose of industrial wastewater or stormwater, and shall include but is not limited to lagoons, excavations, basins, diked areas, and pits.

"**Synthetic liner**" means a manufactured liner material composed of plastics, resins or other flexible materials, which is designed and manufactured to be used to control the seepage or release of waste through the liner material.

"**Tank system**" means any subsurface disposal system which involves the storage and treatment of wastewater.

"**Total retention surface impoundment**" means a surface impoundment designed and constructed without an outfall structure.

"**U.S.C.**" means United States Code.

"**Waste class**" means the following classification of wastewater, including stormwater:

(A) Class I: containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a significant risk of harm to humans, aquatic life, wildlife or the environment, either through high potential to migrate in groundwater or the likelihood, if discharged, to significantly degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards. These wastewaters require the most restrictive environmental protection measures.

(B) Class II: containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a moderate risk of harm to humans, aquatic life, wildlife, or the environment, either through the potential to migrate in groundwater or a reasonable possibility, if discharged, to degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards.

(C) Class III: containing or suspected to contain pollutants which do not pose a substantial risk of harm to humans, aquatic life, wildlife, or the environment because of a relative immobility in groundwater or a general lack of direct toxicity, and which are not likely, if discharged, to degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards.

(D) Class IV: containing only sanitary wastewater from industrial facilities. Class IV wastewaters are not subject to this Chapter, but are governed by OAC 252:641 (under 5,000 gpd) or by OAC 252:656 (5,000 gpd or more).

(E) Class V: industrial wastewater not otherwise classified.

"**Waste containment system**" means storage tanks, containers and other storage reservoirs, transfer lines, pumps, fittings, overflow prevention devices, and any associated anti-corrosion measures and leak prevention or detection systems.

SUBCHAPTER 9. TANK SYSTEM STANDARDS

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

The use of tank systems for all wastewater classifications is authorized as follows:

(1) Existing tank systems without subsurface absorption trenches or lateral lines can be used for the treatment of Class I, II, III, and V wastewater.

(2) Existing tank systems with subsurface absorption trenches or lateral lines are subject to the Underground Injection Control permitting process.

(3) To ensure the protection of groundwater in accordance with OAC ~~785:45-7252:730~~, new tank systems shall not utilize subsurface absorption trenches or lateral lines for disposal or dispersal of industrial wastewater.

SUBCHAPTER 11. LAND APPLICATION STANDARDS

252:616-11-1. Restrictions

(a) **Beneficial use.** No person may land apply sludge or wastewater except for the purpose of beneficial use.

(b) **Manner.** Land apply sludge and wastewater in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day (material from impoundments that is recovered as product is exempt). Do not store or land apply, or allow to runoff, sludge or wastewater to wetlands or waters of the State. Discharges to waters of the State are prohibited without a discharge permit under OAC 252:606.

(c) **Storage.** Store industrial sludge as specified in the MOP. Industrial sludge shall not be stored for greater than six (6) months without prior written approval from the DEQ and in no case for longer than one (1) year.

(d) **Endangered or threatened species.** Do not land apply if it is likely to adversely affect a threatened or endangered species listed under section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.

(e) **Topography.** A land application site shall have minimal slope or be contoured to prevent ponding and soil erosion. No application shall occur on land having a slope exceeding five percent (5%) unless erosion and runoff control provisions are implemented, except that land having a slope of ten percent (10%) or less. Land having a slope greater than ten percent (10%) may be utilized for land application only with Department approval. For land application for dust suppression on roadways, clean wastewater hauling vehicles prior to leaving the site with provisions for disposition of rinse water.

(f) **Waste classification.** Do not land apply Class I or II wastewaters.

(g) **Scenic river basin prohibition.** Do not land apply industrial sludge in a scenic river basin as defined by OAC ~~785:45252:730~~ Oklahoma's Water Quality Standards.

[OAR Docket #22-773; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 621. NON-INDUSTRIAL DISCHARGING AND PUBLIC WATER SUPPLY LAGOONS

[OAR Docket #22-774]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
252:621-1-2 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.
Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY THE GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

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 1. GENERAL PROVISIONS

252:621-1-2. Definitions

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

"Artificial membrane liner" means a manufactured liner material composed of plastics, resins or other flexible materials, which is designed and manufactured to be used to control the seepage or release of waste or wastewater through the liner material.

"Berm" means a man-made barrier designed to control wastewater and/or stormwater.

"Biosolids" means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as amendments. This term is within the meaning of "sludge" referenced in 27A O.S. § 2-6-101(11). Biosolids are divided into the following classes:

(A) Class A Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32(a);

(B) Class B Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32(b).

"Board" means the Environmental Quality Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Cell" means a single wastewater lagoon or a part of a multiple wastewater lagoon system that shares a dike with another lagoon area.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Detention time" means the theoretical time required to displace the contents of a tank or treatment unit at a given rate of flow (volume divided by rate of flow). Also called "retention time".

"Dike" or "Embankment" means a bank, usually composed of earth, which is constructed to control or confine wastewater within a lagoon.

"Discharge" means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching or other means of release of wastes or wastewater into any waters of the state or into or on any location where they may enter waters of the state.

"Discharge point" or "outfall" means the point at which wastes or wastewater enters waters of the state or become waters of the state.

"Discharging lagoon" means any lagoon which has a permitted point source discharge to "waters of the state".

"Engineer" means a person who designed the sewage or wastewater treatment works and who conceived, developed, executed or supervised the preparation of the plan documents. Said person shall be licensed in the State of Oklahoma to practice engineering and shall be a registered professional engineer or a firm holding a valid certificate of authorization from the

Oklahoma Board of Registration for Professional Engineers and Land Surveyors.

"EPA" means the United States Environmental Protection Agency.

"Executive Director" or "Director" means the Executive Director of the Department of Environmental Quality.

"Freeboard" means the vertical distance from the surface water level in the lagoon to a point which is even with the top of the dike.

"Holding capacity" means the volume of space in a lagoon which is calculated assuming a minimum freeboard of three (3) feet, or calculated by the freeboard specified in a permit issued or specific directive given by the Department.

"Lagoon" means a lined basin, whether with soil or with other DEQ approved material, either below or above ground level which is designed, maintained and/or operated to store, recycle, treat and/or dispose of municipal/domestic wastewater or stormwater, and shall include but is not limited to man-made topographic depressions, excavations, basins, diked areas, impoundments, pits and ponds.

"Land application" means the application of treated wastewater to a vegetated land surface with the applied wastewater being further treated as it flows through the plant-soil matrix.

"Liner" means a barrier which is designed, constructed and installed in a lagoon and which has appropriate chemical and physical properties to ensure that such structures do not fail to control the seepage or release of waste and wastewater from the lagoon.

"Mean" means the calculated arithmetic average of a set of numerical data.

"NRCS" means the Natural Resource Conservation Service.

"OAC" means Oklahoma Administrative Code.

"Oklahoma's Water Quality Standards" means the rules promulgated by the ~~Oklahoma Water Resources Board~~ DEQ and contained in OAC ~~785:45~~ 252:730 which classify waters of the state, designate beneficial uses for which the various waters of the State shall be maintained and protected, and prescribe the water quality standards required to sustain designated uses.

"Operator" means the person responsible for the maintenance and operation of a wastewater treatment system or wastewater treatment works and responsible for keeping any required records and providing reports to the Department.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity whatsoever.

"Point source" shall have the meaning assigned to that term in OAC 252:606.

"Receiving water" means that portion of any waters of the state into which wastes are or may be released, leached, or discharged. See also definition of "waters of the state".

"Sanitary wastewater" means and includes but is not limited to wastewater from drinking fountains, showers, toilets, lavatories, and kitchens.

"Septic" means bacterial activity in the absence of oxygen. This condition may cause enhancement of the growth of anaerobic bacteria and production of unpleasant odors.

"Total retention lagoon" means a lagoon designed and constructed to contain all wastewater without a discharge structure, in any and all types of weather conditions.

"Toxic substances" means substances regulated by the Department to protect beneficial uses of waters of the state, human health, or the environment.

[OAR Docket #22-774; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 628. INDIRECT POTABLE REUSE FOR SURFACE WATER AUGMENTATION

[OAR Docket #22-775]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions 252:628-1-2 [AMENDED] 252:628-1-3 [AMENDED] Subchapter 3. Benchmarks and Implementation for IPR Source Water Discharges 252:628-3-2 [AMENDED] 252:628-3-6 [AMENDED] 252:628-3-7 [AMENDED] Subchapter 9. Permitting Requirements for IPR Source Water 252:628-9-4 [AMENDED] Subchapter 11. IPR Receiving Waterbody Monitoring 252:628-11-1 [AMENDED] 252:628-11-2 [AMENDED] 252:628-11-3 [AMENDED] 252:628-11-4 [AMENDED] 252:628-11-5 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203. Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY THE GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY

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STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

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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 1. GENERAL PROVISIONS

252:628-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. Section 2-1-101 et seq.), the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**BOD₅**" means 5-day biochemical oxygen demand.

"**CBOD₅**" means 5-day carbonaceous biochemical oxygen demand.

"**Conservative parameter**" means a parameter which persists in the environment, having characteristics which are resistant to ordinary biological or biochemical degradation.

"**Constituents of Emerging Concern (CECs)**" means a group of synthetic or naturally occurring chemicals that are not currently regulated under the Clean Water Act (CWA) or Safe Drinking Water Act (SDWA) and are not commonly monitored in the environment. These constituents are to be evaluated in IPR Source Water treatment. Examples of CECs are chemicals in the following categories: prescription and nonprescription drugs, home care products, veterinary and human antibiotics, industrial and household products, sex and steroidal hormones, other endocrine disrupters, and engineered nanomaterials. Selected constituents may be surrogates for a broader list of constituents for use in evaluating overall levels in treated IPR Source Water or for reservoir evaluation.

"**CPI**" means Consumer Price Index. See Section 628-1-4(e) for additional information.

"**DEQ**" means the Oklahoma Department of Environmental Quality.

"**DMR**" means discharge monitoring report.

"**Disinfection**" means the selective destruction of pathogens in water.

"**Drought of Record**" means, for reservoirs, the month with the highest concentration of a given conservative parameter as predicted by hydrologic and mass balance considerations. For stream IPR projects, the drought of record means the lowest monthly average streamflow over a minimum 40 year period of record or other period of record as approved by DEQ.

"**HAB**" means harmful algal bloom.

"**Hydrologic Mass Balance (HMB) Model**" means a minimum monthly time-step model which uses hydrologic data over a period of record from 1950 to the present, or other period of record as required or approved by DEQ, and may be used to estimate the concentration of a conservative parameter in a reservoir or stream over time. Other models, with DEQ approval, may be substituted for an HMB Model.

"**Industrial facilities**" means those facilities that produce, treat or dispose of wastewater not otherwise defined as domestic wastewater, including the runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling or processing.

"**IPR**" means Indirect Potable Reuse.

"**IPR Source Water**" means water originating from a municipal wastewater treatment facility that meets the benchmarks, treatment, and operational standards of this Chapter and has been permitted under an OPDES wastewater permit for release to a surface water source for a PWS system for the purpose of augmenting the flow to an existing PWS system intake.

"**IPR Source Water Treatment**" means any method, technique, or process which changes the physical, chemical, biological character, or composition of municipal secondary treated wastewater for the purpose of meeting the benchmarks, treatment, and operational standards contained herein for IPR Source Water.

"**IPR Source Water Treatment Plant (IPR SWTP)**" means any plant or other works used for the purpose of treating, stabilizing, or holding IPR Source Water.

"**LMR**" means lake and stream monitoring report.

"**MOR**" means monthly operating report.

"**MQL**" means minimum quantifiable level.

"**Non-conservative parameter**" means a parameter which undergoes significant short-term degradation or change in the environment other than by dilution.

"**NTU**" means Nephelometric Turbidity Unit.

"**O&M**" means Operation and Maintenance.

"**Operator**" means the individual who is properly certified by DEQ and who is responsible for the maintenance and operation of an IPR Source Water Treatment Plant.

"**OWQS**" means the Oklahoma Water Quality Standards, contained at OAC ~~785:45-252:730~~.

"**pH**" means the negative common logarithm of the hydrogen-ion activity in moles per liter, as determined using approved methods.

"**Secondary treatment**" means wastewater treatment to a level that will achieve the effluent limitations specified in OAC 252:606-5-2.

"**Surface water**" means waters of the state located upon the surface of the earth.

"**Surrogate**" means an individual chemical or measurement that provides an indication of treatment process performance and/or represents the presence of a broader range of similar chemicals.

"**SWS-R**" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed water for the purpose of indirect potable reuse.

"**TDS**" means total dissolved solids.

"**TOC**" means total organic carbon.

"**TRC**" means total residual chlorine.

"**TRO**" means total residual oxidant.

"**TSS**" means total suspended solids.

252:628-1-3. Applicability and general requirements

(a) **Applicability.** The requirements of this Chapter apply to an applicant proposing the use of IPR Source Water to augment an existing source for a Public Water Supply (PWS) system. Permitted wastewater discharges existing as of the date of the initial promulgation of this rule are not considered IPR discharges subject to the rules in this Chapter.

(b) **Indirect Potable Reuse (IPR) for surface water (lake) augmentation.** This type of planned water reuse involves the discharge of treated wastewater to a surface waterbody by an entity for the purpose of augmenting a lake serving as a source for a PWS system. These rules apply to discharges to both SWS-R waterbodies and other reservoirs designated with the Public and Private Water Supply beneficial use in the Oklahoma Water Quality Standards (OWQS), or upstream of such reservoirs. Discharges to reservoirs designated as SWS-R by the ~~Oklahoma Water Resources Board (OWRB)~~ DEQ shall be regulated in accordance with ~~OWRB~~ DEQ anti-degradation policy.

(c) **Indirect Potable Reuse (IPR) for surface water (streams and rivers) augmentation.** Based on DEQ's evaluation of flow rates, travel times, distance to water intakes, and other factors, certain discharges of treated municipal wastewater to streams and rivers that serve as a source for a PWS system may also be determined to be IPR and subject to these rules.

(d) **Requirements.** In general, municipal wastewater effluent that has been treated to secondary standards will need advanced treatment in order to meet, at a minimum, the IPR effluent benchmarks in Subchapter 3 of this Chapter as well as the technology and operational standards described in Subchapters 5 and 7 of this Chapter. In addition, the applicant and their design engineer shall meet the certification and contingency planning requirements of this Subchapter.

(e) **Human Health Protection.** The goal of these rules is to manage the risk to public health, safety, and welfare from the discharge of IPR Source Water for surface water augmentation.

(f) **Potential Impacts.** The decision by an applicant to augment an existing source for a PWS system with IPR Source Water is a voluntary activity by the applicant. The applicant should undertake all measures, whether required in this rule or

not, to ensure the protection of human health and the environment.

(g) **Certification.** Engineering reports and plans and specifications shall be signed and sealed by a professional engineer registered in the State of Oklahoma certifying that the submittal was prepared in accordance with good engineering practice. In addition to this certification, the responsible official for the applicant shall submit a cover letter stating that the project will meet the applicable requirements of this Chapter.

(h) **Contingency Plan.** The applicant shall submit to DEQ for approval a contingency plan describing the steps the applicant will take in the event of an adverse public health situation developing in the receiving waterbody as a result of the applicant's discharge, including but not limited to, harmful algal blooms and harmful concentrations of other pollutants. The plan shall evaluate steps for lake water quality restoration as well as provisions for supplying potable water to the citizens impacted by loss of the PWS system source. The applicant shall demonstrate the capability to respond to the temporary loss of a PWS system source due to IPR impacts.

SUBCHAPTER 3. BENCHMARKS AND IMPLEMENTATION FOR IPR SOURCE WATER DISCHARGES

252:628-3-2. Other rules apply

(a) The IPR benchmarks established by this Subchapter apply in addition to other rules for wastewater discharges, including ~~OAC 785:45252:730~~, ~~OAC 785:46252:740~~, OAC 252:301, OAC 252:606 and OAC 252:690. For parameters which are subject to both the IPR benchmarks established by this Subchapter and effluent limitations developed in accordance with OAC 252:606 and OAC 252:690, the more stringent effluent limitations and monitoring requirements shall apply.

(b) IPR Source Water discharges shall maintain existing and designated beneficial uses; shall not cause or contribute to a violation of narrative and numeric criteria; and shall be consistent with anti-degradation policy established in the OWQS.

(c) IPR Source Water discharges to SWS-R waterbodies shall not consume more than the portion of the assimilative capacity determined and allocated to the discharger in accordance with ~~OAC 785:45252:730~~, ~~OAC 785:46252:740~~, OAC 252:606 and OAC 252:690.

(d) IPR Source Water discharges to lakes shall be at least as protective as Oklahoma's Discharges to State Lakes policy as described in Oklahoma's Continuing Planning Process (CPP) document.

252:628-3-6. IPR benchmarks for additional conservative parameters

(a) **Additional conservative parameters.** Refer to Appendix A of this Chapter for the list of additional conservative parameters.

(b) **Effluent limitations for TDS.** Effluent limitations for TDS shall be set so the maximum ambient concentration will not exceed the greater of 700 milligrams per liter or two (2)

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standard deviations above the mean background TDS value of the receiving waterbody prior to IPR Source Water discharge. The calculated permit limit shall be applied as a monthly average permit limit in the OPDES discharge permit. The daily maximum permit limit shall be established as 1.5 times the monthly average permit limits. Background levels may be established from any combination of scientifically defensible data, including historical data, segment averages, and baseline monitoring.

(c) **Permit reopener for TDS.** Should receiving water monitoring for TDS indicate that the receiving waterbody has exceeded the greater of 700 milligrams per liter or two (2) standard deviations above the mean background TDS value prior to IPR discharge, the permit may be reopened and modified to reduce effluent limitations or increase frequency of effluent monitoring.

(d) **Effluent limitations for additional conservative parameters other than TDS.** Effluent limitations for additional conservative parameters other than TDS shall be calculated to meet action levels established in accordance with Subchapter 11 of this Chapter. The calculated permit limits shall be applied as monthly average permit limits in the OPDES discharge permit. Daily maximum permit limits shall be established as 1.5 times the monthly average permit limits.

(e) **Mixing zones.** Complete mixing of effluent and receiving water shall be used to determine appropriate effluent limitations for additional conservative parameters, unless superseded by mixing zones or dilution factors established in OAC 785:46252:740. An HMB model or other DEQ-approved model shall be used for implementation purposes.

(f) **Effluent monitoring requirements.** The following effluent monitoring requirements apply:

- (1) IPR Source Water discharges shall be monitored for additional conservative parameters monthly.
- (2) DEQ may increase the monitoring frequencies listed in (f)(1) of this Section for a period not to exceed two years during the initial permit cycle for the purpose of establishing the pattern and extent of variation for a given parameter.

252:628-3-7. IPR benchmarks for nutrients, chlorophyll-a, and algal biomass

(a) **Water quality standards.** IPR Source Water discharges shall not cause or contribute to an exceedance of narrative or numerical OWQS for nutrients, dissolved oxygen or chlorophyll-a. The evaluation of potential OWQS impacts shall be made using DEQ-approved effluent and receiving waterbody modeling.

(b) **Eutrophication.** IPR Source Water discharges shall not cause or contribute to excessive growth of algal biomass, periphyton, phytoplankton, cyanobacteria, or aquatic macrophyte communities, which impairs any existing or designated beneficial use.

(c) **Mixing zones.** No mixing zones or dilution factors shall be allowed for establishing effluent limitations for nitrate (as N) and nitrite (as N). Mixing zones or dilution factors shall be designated on a case-by-case basis for establishing effluent

limitations for other nutrients, unless superseded by mixing zones or dilution factors established in OAC 785:46252:740.

(d) **Total nitrogen.** Total nitrogen shall not exceed 8 milligrams per liter as a monthly average or 12 milligrams per liter daily maximum. More stringent effluent limitations representing enhanced nutrient removal technologies for nitrogen may be established where DEQ-approved modeling demonstrates that the IPR Source Water discharge may cause or contribute to an increase in ambient receiving waterbody concentrations of nitrogen to levels that would violate paragraph (a) or (b) of this Section, or of nitrate (as N) to levels that would exceed 10 milligrams per liter.

(e) **Total phosphorus.** Total phosphorus shall not exceed 0.2 milligrams per liter monthly average or 0.3 milligrams per liter daily maximum. More stringent effluent limitations representing enhanced nutrient removal technologies for phosphorus may be established where DEQ-approved modeling demonstrates that the IPR Source Water discharge may cause or contribute to an increase in ambient receiving waterbody concentrations of phosphorus to levels that would violate paragraph (a) or (b) of this Section.

(f) **Chlorophyll-a.** The following requirements apply:

(1) **SWS-R Waterbodies.** IPR Source Water discharges shall not cause or contribute to an increase in ambient receiving waterbody concentrations to levels that would exceed the aggregate long-term average concentration of chlorophyll-a at a depth of 0.5 meters below the waterbody surface of 0.010 milligrams per liter. Effluent limitations for nutrients to ensure compliance with this criterion shall be developed based on DEQ-approved modeling of the discharge and receiving waterbody.

(2) **Non-SWS-R Waterbodies.** IPR Source Water discharges shall not cause or contribute to an exceedance of narrative or numerical water quality standards for nutrients or chlorophyll-a. Effluent limitations for nutrients to ensure compliance with these criteria shall be developed based on DEQ-approved modeling of the discharge and receiving water.

(g) **Effluent monitoring requirements.** The following effluent monitoring requirements apply:

(1) Nutrient parameters which are included in the permit shall be monitored at a frequency of weekly during the period of May through October and twice a month during the period of November through April; and

(2) DEQ may increase the monitoring frequencies listed in (g)(1) of this Section for a period not to exceed two years during the initial permit cycle for the purpose of establishing the pattern and extent of variation for a given parameter.

(h) **Harmful algal blooms.** In the event HABs occur at an area of the receiving waterbody influenced by the IPR Source Water discharge, the permittee shall immediately cease discharge via the IPR Source Water outfall, and notify DEQ within 24 hours.

(1) A written report evaluating the size and extent of the HABs, the potential causes for the HABs, and the steps taken to eliminate the HABs shall be submitted to DEQ within ten (10) days.

- (2) Discharge via the IPR Source Water outfall may resume after corrective action is completed, if necessary, the HABs are eliminated and written approval is received from DEQ.

SUBCHAPTER 9. PERMITTING REQUIREMENTS FOR IPR SOURCE WATER

252:628-9-4. Feasibility study

- (a) Applicants shall submit to DEQ three (3) copies and receive approval of the feasibility study for the proposed new IPR SWTP prior to the submittal of the IPR SWTP engineering report. Applicants shall also submit a letter in which the applicant endorses the content of each feasibility study submitted to DEQ.
- (b) The feasibility study shall include, at a minimum:
- (1) An evaluation of the applicant's needs, preferably sourced from the applicant's local Strategic Water Supply Plan, or other similar document;
 - (2) A description of water reuse and reclamation opportunities;
 - (3) A description of potential alternatives (including reuse and non-reuse) with comparisons as appropriate of cost effectiveness, operational complexity, environmental impact, reliability, and flexibility;
 - (4) A discussion of the potential of the project for water supply diversification, such as lowered demand on groundwater supplies in time of drought;
 - (5) For waterbodies and watersheds designated as SWS-R, a discussion of the project's potential impact on water quality and the environment, including but not limited to a discussion regarding antidegradation requirements, criteria to protect beneficial uses, and assimilative capacity as described in OAC ~~785:45252:730~~, OAC ~~785:46252:740~~; and
 - (6) A discussion of any legal, regulatory, jurisdictional, and partnership concerns regarding the project.

SUBCHAPTER 11. IPR RECEIVING WATERBODY MONITORING

252:628-11-1. General provisions

- (a) **Purpose.** The rules of this Subchapter provide protocols which shall be used to monitor ambient water quality in sources for Public Water Supply (PWS) systems being augmented with IPR Source Water. The goals of the waterbody monitoring are as follows:
- (1) To protect public health and the environment by monitoring for changes in the receiving waterbody;
 - (2) To protect the beneficial uses of the receiving waterbody by performing trend monitoring on parameters that are evaluated in use attainment assessments; and
 - (3) To evaluate modeling outcomes for all waterbodies and to monitor the assimilative capacity for SWS-R waterbodies.

- (b) **Testing Procedures.** Testing procedures for the monitoring of IPR receiving waterbodies shall be in accordance with OAC ~~785:4614252:740-1-4~~.

- (c) **Quantitative data.** Data collected for the monitoring of IPR receiving waterbodies shall use analytical methods listed at 40 CFR Part 136 or other EPA-approved methods. Where there is no approved analytical method listed, the applicant shall fully describe the method used for DEQ review and obtain written approval prior to utilizing these data. All data submitted shall be defensible analytical data. Reporting and recordkeeping shall be in accordance with Subchapter 7 of this Chapter.

- (d) **Measurable levels and data characterization.** Measurable levels for the monitoring of IPR receiving waterbodies shall be less than or equal to the MQLs established in Appendix B of OAC 252:690. Where there is no established MQL, the applicant shall fully describe the method and MQL used for DEQ review and obtain approval prior to utilizing these data. Where a monitored parameter has an established MQL, DEQ shall include a provision in the permit requiring measurable levels be less than or equal to the MQL. Data shall be characterized as outlined in OAC 252:690-3-2.

- (e) **Agency discretion to consider additional data.** An agency with jurisdiction may consider other relevant data meeting the requirements of this Subchapter in addition to that required by the rules in this Subchapter for any particular parameter.

- (f) **Parameter Groups.** There are ten parameter groups, as described in this Subsection. The permittee shall monitor the waterbody for specific parameters subject to DEQ approval.

- (1) **In-Situ.** In-situ parameters include dissolved oxygen (DO), temperature, pH, electro-conductivity (EC), and oxidation/reduction potential (ORP);

- (2) **Nutrients.** Nutrient parameters include total nitrogen (TN), nitrite (as N), nitrate (as N), total Kjeldahl nitrogen (TKN), ammonia, total phosphorus (TP), and dissolved reactive phosphorus, also known as ortho-phosphorus (OP);

- (3) **Algal biomass and related products.** Algal biomass and product parameters include chlorophyll-a, pheophyton, phytoplankton, phycocyanin, and cyanotoxins. Taxonomy and phytoplankton density are also included;

- (4) **Minerals.** Minerals include TDS, chloride, and sulfate. Alkalinity is included in this parameter group for monitoring purposes;

- (5) **Metals.** Metals include inorganic toxics listed in Appendix G of OAC ~~785:45252:730~~, inorganic chemicals included in the National Primary Drinking Water Regulations, and metals included in the National Secondary Drinking Water Regulations. Hardness is included in this parameter group for monitoring purposes;

- (6) **Microorganisms.** Microorganism parameters include E. coli, total coliform, viruses, giardia, cryptosporidium, and legionella;

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- (7) **Toxics.** Toxics include the organic toxics listed in Appendix G of OAC ~~785:45-252:730~~ and organic chemicals included in the National Primary Drinking Water Regulations;
- (8) **Constituents of Emerging Concern.** CECs are defined in Subchapter 1 of this Chapter. For monitoring purposes, CECs are sorted into functional groups represented by at least one surrogate;
- (9) **Other drinking water parameters.** National primary drinking water regulations list maximum contaminant levels (MCLs) or action levels for disinfection byproducts, inorganic chemicals, organic chemicals, microorganisms, and radionuclides. Maximum residual disinfection levels (MRDLs) are listed for disinfectants. For monitoring purposes, the drinking water parameters are those parameters listed in the National Primary Drinking Water Regulations that are not addressed in one of the other nine parameter groups; and
- (10) **Total Organic Carbon.** TOC is the amount of carbon found in an organic compound.

252:628-11-2. Sampling plans

- (a) **General.** The applicant shall submit sampling plans for baseline monitoring, OPDES permit monitoring, and OPDES permit renewal monitoring for DEQ approval. Sampling plans shall consider the environmental and spatial variability of the waterbody, including limnological, hydrologic, seasonal, and temporal variation. The sampling plans shall also consider both the internal and external loading and nutrient cycling.
- (b) **Baseline characterization.** The provisions of this Subsection shall be used to establish a baseline characterization of the IPR receiving waterbody before the IPR Source Water discharge begins.
- (1) **Baseline characterization sampling plan.** The permittee shall submit a baseline characterization sampling plan to DEQ for review and approval. The plan shall meet the minimum requirements outlined in this Subchapter.
- (2) **Duration.** The baseline characterization of the waterbody shall include data collected for a minimum of one (1) year. Length of monitoring plan may be adjusted by DEQ based on location and parameter.
- (3) **Frequency.** Sampling frequency for each parameter is subject to DEQ approval and shall be identified in the sampling plan. Sampling frequency may be adjusted by DEQ based on location and parameter. Each sampling event shall occur at least once per month so that a scientifically defensible data set will be generated after one (1) year. At least ten (10) data points per monitoring site are required for a baseline data set to be considered complete.
- (4) **Spatial.** Sampling locations for each parameter are subject to DEQ approval.
- (5) **Baseline waterbody monitoring list.** The list of parameters monitored to establish a baseline shall be robust enough to establish a scientifically defensible baseline for all factors of concern in the receiving waterbody.

The required parameters for baseline characterization are subject to DEQ approval. Additional information can be found in Subchapter 7 of this Chapter.

- (6) **SWS-R Waterbodies.** Baseline sampling of SWS-R waterbodies shall meet the requirements of OAC ~~785:46-13252:740-13~~.
- (c) **OPDES waterbody monitoring requirements.** The provisions of this subsection shall be used to establish OPDES permit waterbody monitoring requirements.
- (1) **Monitoring requirements.** The permittee shall submit a waterbody monitoring plan to DEQ for review and approval. The approved monitoring plan shall be part of the OPDES permit. The plan shall meet the minimum requirements outlined in this Subchapter. Monitoring shall be adequate to characterize the accumulation and concentration of conservative substances.
- (2) **Frequency.** Sampling frequency for each parameter is subject to DEQ approval.
- (3) **Spatial.** Sampling location for each parameter is subject to DEQ approval.
- (4) **OPDES waterbody monitoring list.** The OPDES permit establishes waterbody monitoring requirements. The parameters subject to the routine OPDES waterbody monitoring may be a reduced list, utilizing surrogates and parameters likely to be present in discharge. Monitored parameters are subject to DEQ approval. Additional information can be found in Subchapter 7 of this Chapter.
- (5) **SWS-R Waterbodies.** OPDES sampling of SWS-R waterbodies shall meet the requirements of OAC ~~785:46-13252:740-13~~.
- (d) **OPDES permit renewal sampling requirements.** The provisions of this subsection shall be used to establish monitoring requirements for renewal of the OPDES permit.
- (1) **Monitoring requirements.** The permittee shall submit a sampling plan to DEQ for approval. The sampling plan shall address the sampling requirements for permit renewal and these requirements shall be included in the permit. Sampling results shall be included with the OPDES renewal application. The sampling requirements may be updated during the OPDES permit renewal process with DEQ approval.
- (2) **Frequency.** OPDES permit renewal sampling occurs once every five years during OPDES permit renewal.
- (3) **Spatial.** Sampling locations are subject to DEQ approval.
- (4) **OPDES permit renewal monitoring list.** The waterbody shall be monitored for a more comprehensive list of parameters during the OPDES permit renewal cycle, occurring once every five years. The sampled parameters are subject to DEQ approval. Additional information can be found in Subchapter 7 of this Chapter.
- (e) **Lake and stream monitoring reports.** OPDES waterbody monitoring sampling plan shall include a proposed LMR form for DEQ approval. The LMR form shall provide all relevant information. LMR forms shall be completed and submitted in accordance with Subchapter 7 of this Chapter.

252:628-11-3. Data requirements

(a) **General.** Scientific data from the waterbody shall be used as prescribed in this Section. Data shall be collected and analyzed in a manner consistent with testing procedures provided in OAC ~~785:46-15-3(e)~~252:740-15-3(g) or practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with OAC ~~785:46-15-3(e)~~252:740-15-3(g). All relevant existing data available for a waterbody shall be used in the analysis, subject to the spatial, temporal, and other requirements of this Section.

(b) **Spatial coverage.** Subject to DEQ approval, IPR monitoring sites shall include:

(1) All drinking water intake structures located on the receiving waterbody. Some parameters may be sampled from a raw water tap at the water treatment plant. Other parameters shall be sampled in the receiving waterbody at a point near the intake. Intake structure sampling site requirements for individual parameters are subject to DEQ approval.

(2) Any additional drinking water intake structures within five (5) miles downstream of the discharge point.

(3) IPR Source Water discharge areas.

(4) Beneficial Use Monitoring Program (BUMP) monitoring stations, if applicable. Waivers for individual BUMP monitoring stations may be granted at DEQ's discretion.

(5) Other sites as assigned. If the receiving water does not have BUMP monitoring stations, or the BUMP monitoring stations are not adequate for IPR receiving water monitoring requirements, DEQ shall assign additional monitoring sites. Alternatively, the permittee may propose monitoring sites, subject to DEQ approval.

(c) **Temporal coverage.** Monitoring frequency for all parameters shall address seasonal variability and critical periods, subject to DEQ approval. At a minimum, nutrients and algal biomass shall have a monitoring frequency of once every two weeks during the critical season of May through October and once per month during the remainder of the year. DEQ may increase the monitoring frequency of nutrients and algal biomass in the event of a harmful algal bloom in the receiving waterbody.

(d) **Additional data requirements.** The following data requirements apply.

(1) **In-Situ.** Daily diurnal 1-meter profiles shall be required for water temperature and dissolved oxygen during periods of thermal stratification and daily diurnal surface measurements shall be required during periods of complete mix. Because periods of thermal stratification may vary seasonally and can be reservoir specific, both baseline sampling and IPR receiving waterbody monitoring may be used to determine the approximate beginning date of stratification setup, or if lakes are polymictic, the multiple stratification/mixing periods that may setup during a particular season. Validation profiles shall be measured periodically during periods of complete mix.

(2) **Nutrients.** Nutrient monitoring shall be adequate to characterize both external and internal loading and nutrient cycling.

(3) **Algal biomass and related products.** Algal biomass monitoring and taxonomy shall be adequate to characterize algal growth and community shifts during critical periods.

(e) **Quality assurance.** Quality of data shall be assured as outlined in OAC ~~785:46-15-3(e)~~252:740-15-3(g).

252:628-11-4. SWS-R requirements

(a) **Assimilative capacity.** The permittee shall determine assimilative capacity and propose allowable consumption, if any, as outlined in OAC ~~785:45-5-25(e)(8)(C)~~252:730-5-25(c)(8)(C) and OAC ~~785:46-13~~252:740-13. Monitoring for assimilative capacity in SWS-R waterbodies shall meet the requirements outlined in OAC ~~785:46-13~~252:740-13. The IPR receiving waterbody monitoring program shall include monitoring the assimilative capacity.

(b) **Chlorophyll-a.** The long-term average concentration of chlorophyll-a shall not exceed 0.010 milligrams per liter (mg/L), as outlined in OAC ~~785:45-5-10(7)~~252:730-5-10(7). The IPR receiving waterbody monitoring program shall include monitoring chlorophyll-a levels, with greater frequency during critical periods.

(c) **Technical evaluation report.** The permittee shall technically evaluate the IPR receiving waterbody at least once every five years to determine the attainment or nonattainment of beneficial uses, as outlined in OAC ~~785:45-5-25(e)(8)(D)~~252:730-5-25(c)(8)(D). The IPR receiving waterbody monitoring program shall include the collection of data necessary to complete the technical evaluation report.

252:628-11-5. Action levels

(a) **General.** At a minimum, action levels shall protect beneficial uses and the criteria developed to protect them and consider rules regarding use of assimilative capacity in SWS-R waterbodies as outlined in OAC ~~785:45-5-25~~252:730 and OAC ~~785:46-13~~252:740-13.

(b) **Statistical significance.** Some action levels, such as the action levels for CECs, are based on a statistically significant increase. Determination of statistical significance is subject to DEQ approval. The determination of statistical significance may be determined by methods listed in this subsection, or by other DEQ-approved methods.

(1) **The Student's t Test.** The student's t test can be used to determine if two sets of data are significantly different from each other. A 95% confidence level shall be used when using the student's t test to determine statistical significance.

(2) **Multiple range tests.** Multiple range tests can be used to test for significant difference for a group of ranked means. Tests may include least significant difference or multiple t test, Student-Newman-Keuls test, Tukey's test based on allowances, and Duncan's multiple range test. A significance level of 5% shall be used.

(3) **Distribution free methods.** For parameters that will likely not be normally distributed, distribution free methods shall be used to determine statistical significance.

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Options include the Mann-Whitney test, Mood's Median test, and the Kruskal-Wallis test.

(c) **Reporting.** Permittee shall report results from statistical significance tests on the LMR forms as required by the permit.

(d) **Actions and action levels by parameter group.** The following requirements apply.

(1) **In-Situ.** Actions and action levels shall be determined by DEQ.

(2) **Nutrients.** The actions and action levels for nutrients are as follows:

(A) **Accumulation of phosphorus.** Actions and action levels shall be determined by DEQ; and

(B) **Accumulation of nitrogen.** Actions and action levels shall be determined by DEQ.

(3) **Algal biomass.** Actions and action levels shall be determined by DEQ.

(4) **Minerals.** The following requirements apply for minerals.

(A) **Total Dissolved Solids.** Requirements shall be placed in the permit to prevent the maximum ambient concentration exceeding the greater of 700 milligrams per liter or two (2) standard deviations above the mean background TDS value of the receiving waterbody prior to IPR Source Water discharge. Background levels can be established from any combination of scientifically defensible data, including historical data, segment averages, and baseline monitoring. Potential actions to control TDS shall include one or more of the following:

- (i) Cease discharge;
- (ii) Reduce discharge;
- (iii) Increase treatment; and
- (iv) Other appropriate action as approved by DEQ.

(B) **Chloride and sulfate.** Actions and action levels shall be determined by DEQ.

(5) **Metals.** Actions and action levels shall be determined by DEQ.

(6) **Microorganisms.** There are no action levels for this parameter group.

(7) **Toxics.** Actions and action levels shall be determined by DEQ.

(8) **Constituents of Emerging Concern.** When a statistically significant accumulation is identified at any monitoring site in the waterbody, the following actions may be required at DEQ's discretion:

(A) Investigate implications for public health and the environment. Permittee shall submit findings to DEQ.

(B) Increase effluent and/or waterbody monitoring frequency. Increased monitoring requirements shall be reflected in the OPDES permit. Additionally, the permittee shall not be eligible for reduced waterbody monitoring for the parameter of concern at the permit renewal.

(C) Pursue additional source delineation and submit findings to DEQ.

(D) Notification of PWS systems and any other entities as appropriate using the waterbody of the detected increase.

(E) Other appropriate action as approved by DEQ.

(9) **Other drinking water parameters.** Actions and action levels shall be determined by DEQ.

(10) **Total Organic Carbon.** There are no action levels for this parameter group.

[OAR Docket #22-775; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 652. UNDERGROUND INJECTION CONTROL

[OAR Docket #22-776]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Exclusionary Siting Criteria for Class I Wells
252:652-3-1 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.
Water Quality Management Advisory Council; 27A O.S. § 2-2-201,

ADOPTION:

September 13, 2022

EFFECTIVE:

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APPROVED BY THE GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. An emergency exists and this rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730. and Department of Environmental Quality.

GIST/ANALYSIS:

The underlying reason for the rulemaking is the Legislature passed and the Governor signed Senate Bill No. 1325 and House Bill No. 3824 which transfer authority for establishing Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows DEQ to issue Water Quality Standard Variances.

The gist of the changes to this rule includes updating an internal reference to OAC 785:45 and "Oklahoma Water Resources Board (OWRB)" and replacing it with a reference to OAC 252:730, and "Department of Environmental Quality."

OAC 252:730 is one of the new emergency rules being promulgated by DEQ in response to the legislation referenced above.

CONTACT PERSON:

David Cates, Department of Environmental Quality, Land Protection Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-5100 (phone), david.cates@deq.ok.gov (e-mail).

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. EXCLUSIONARY SITING CRITERIA FOR CLASS I WELLS

252:652-3-1. Siting criteria

The following rules shall apply to owners and operators of all Class I wells:

- (1) **Groundwater resources and recharge areas.** Except as otherwise provided by Title 27A O.S. § 2-7-111, no permit for a proposed new site shall be granted for a Class I injection well facility to be located over or through an unconsolidated alluvial aquifer or terrace deposit aquifer, or over or through a bedrock aquifer. Site-specific hydrological and geological information which demonstrates that the proposed location does not lie in a prohibited area may be provided by an applicant. The DEQ may require site-specific hydrological and geological information for a facility proposed to be located outside a designated principal groundwater aquifer or recharge area where there is reason to believe the proposed location may be unsuitable due to localized groundwater conditions. Sources used to determine if a site is unpermissible are the "Map of Aquifers and Recharge Areas in Oklahoma", compiled by Kenneth S. Johnson, Oklahoma Geological Survey (1991); and the ~~Oklahoma Water Resources Board~~ Department of Environmental Quality rules codified at ~~OAC 785:45~~ OAC 252:730 Appendices A through D, inclusively, or any successor map(s) to these sources.
- (2) **Water wells.** No permit shall be granted for a new Class I injection well facility proposed to be located within 1320 feet (one-quarter statute mile) of any public or private water supply well. Provided, however, that existing or proposed private water supply wells located on the applicant's property may be exempt from this paragraph at the applicant's discretion. Where proximity of a Class I facility to water supply well(s) is in doubt, a survey shall be conducted by an Oklahoma licensed land surveyor to determine actual distances.
- (3) **Flood plain.** No new Class I injection well facility shall be permitted in the 100 year flood plain unless the 100 year flood plain is subsequently redefined to not include the land area proposed for the new disposal area.
- (4) **Surface water.** No permit shall be granted for a new Class I injection well facility proposed to be located

within the established conservation pool elevation of any reservoir which supplies water for a public water supply.

[OAR Docket #22-776; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 653. AQUIFER STORAGE AND RECOVERY

[OAR Docket #22-777]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Raw Water and Aquifer Characterization

252:653-3-4 [AMENDED]

Subchapter 5. Aquifer Storage and Recovery Treatment Plant Construction

252:653-5-1 [AMENDED]

Subchapter 9. Aquifer Storage & Recovery Operations

252:653-9-2 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203. Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

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APPROVED BY GOVERNOR:

October 25, 2022

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. An emergency exists and this rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45 be amended to reference OAC 252:730.

GIST/ANALYSIS:

The underlying reason for the rulemaking is the Legislature passed and the Governor signed Senate Bill No. 1325 and House Bill No. 3824 which transfer authority for establishing Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows DEQ to issue Water Quality Standard Variances.

The gist of the changes to these rules includes updating internal references to OAC 785:45 and replacing these references with to OAC 252:730. OAC 252:730 is one of the new emergency rules being promulgated by DEQ in response to the legislation referenced above.

CONTACT PERSON:

David Cates, Department of Environmental Quality, Land Protection Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-5100 (phone), david.cates@deq.ok.gov (e-mail).

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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 3. RAW WATER AND AQUIFER CHARACTERIZATION

252:653-3-4. Groundwater standards

Water, as delivered to the aquifer, shall meet the numeric values and any applicable narrative criteria listed in ~~OAC 785:45~~OAC 252:730 for the class of the groundwater aquifer that will receive the water. No allowance for attenuation will be considered unless outlined in ~~OAC 785:45~~OAC 252:730 or on a case-by-case basis, at DEQ's discretion, if human health will not be impacted.

SUBCHAPTER 5. AQUIFER STORAGE AND RECOVERY TREATMENT PLANT CONSTRUCTION

252:653-5-1. Permit and pilot study required

- (a) Subject to the results of the raw water and aquifer characterization of Subchapter 3 of this Chapter, an ASR water treatment plant and a pilot study may be required.
- (b) No person shall construct or modify an ASR water treatment plant without first obtaining a permit to construct in accordance with applicable requirements of OAC 252:626 and 656 and be designed to meet the Groundwater Quality Standards of ~~OAC 785:45-7~~OAC 252:730-7.
- (c) The ASR water treatment plant shall be operated pursuant to the operating requirements of Subchapter 9 of this Chapter.
- (d) The applicant shall demonstrate that adequate capacity and treatment are consistent with all applicable state and federal laws and regulations.
- (e) Unless an extension is granted, a construction permit expires if construction does not begin within one (1) year.
- (f) The permit application is a three-step process:
- (1) demonstrate compliance with the provisions of Subchapter 3 of this Chapter;
 - (2) submit an engineering report (as described in applicable sections of OAC 252:626 and 656); and
 - (3) submit the final design report (as described in applicable sections of OAC 252:626 and 656), along with the required application forms and fees. The final design report shall:
 - (A) include two (2) sets of plans and specifications (or as otherwise directed by DEQ), and
 - (B) reflect any changes from the approved engineering report.
- (g) The applicant shall inform DEQ in writing at least ten (10) days before completion of the project.

- (h) If treated water is chlorinated, it shall be dechlorinated, as appropriate, prior to delivery to the aquifer.

SUBCHAPTER 9. AQUIFER STORAGE & RECOVERY OPERATIONS

252:653-9-2. Duration and continuation of expiring permit

- (a) Any ASR operating permit issued under this Subchapter shall extend for a period of (10) ten years, and shall be reviewed by DEQ every (5) five years for possible permit modification. Upon expiration of an ASR operating permit, a permittee may seek a renewal in accordance with the application requirements of this Subchapter.
- (b) A permittee may continue operating under the conditions of an expired permit provided that a permit renewal application has been submitted to DEQ 180 days prior to expiration of the permit.
- (c) In the event that the water quality standards of ~~OAC 785:45~~OAC 252:730 change within the duration of an ASR operating permit, the permittee shall submit a plan within 180 days of the effective date of the standard to ensure the continued operation of the ASR project shall meet the new water quality standards.

[OAR Docket #22-777; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 656. WATER POLLUTION CONTROL FACILITY CONSTRUCTION STANDARDS

[OAR Docket #22-778]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 11. Lagoon Standards
252:656-11-2 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203.
Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and

specifically authorize DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

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 11. LAGOON STANDARDS

252:656-11-2. Basis of design

(a) **Facultative Lagoons.** Facultative lagoons depend on the relationship between organic loading and surface area (algal photosynthesis) or on surface area and supplemental mechanical aeration to provide an aerobic layer of water at the surface. Facultative lagoons may be either total retention or flow-through (discharge) to waters of the state.

(b) **Flow-through lagoons.**

(1) **Organic loading.** Limit the organic load to 35 pounds BOD per acre (water surface area) per day for any cell depending solely on algal photosynthesis for oxygen. The total water surface area requirement based on organic loading is calculated at the average water depth. Flow-through lagoon systems will not consistently provide ammonia removal through the nitrification process so the effluent from these facilities may be toxic to aquatic life and thus cause whole effluent toxicity test failures.

(2) **Flow Control.** Provide at least two primary cells on new systems. Design the primary cells so they may be operated in either series or in parallel, with at least 60 days retention time. Provide at least two secondary cells operating in series with the primary cells and in series with

each other. Provide a bypass line around any secondary cell in a series to the next cell. The secondary cells shall have at least 60 days detention for a total of at least 120 days detention in the system.

(3) **Depth.** The maximum water depth shall not exceed 6 feet in primary cells and 10 feet in secondary cells. Provide structures to allow the primary cells to operate between four foot depth and the maximum design depth plus three feet of freeboard. The operating depth for a flow-through lagoon shall be between 4 and 6 feet.

(c) **Total Retention.** Size the primary cell(s) for the expected organic loading and additional evaporation cells designed for the hydraulic load. Base the design of all cells receiving raw wastewater on an organic loading of 35 lbs BOD per surface acre per day at the average operating depth. Design the primary cells so they may be operated in either series or in parallel.

(1) **Surface evaporation.** Where more than one acre of surface area is needed, provide at least two cells. For those systems greater than five (5) acres surface area provide at least two primary cells.

(A) Provide sufficient area to evaporate the annual influent flow based on the average daily design flow with allowances for infiltration and inflow to the sewage collection system.

(B) Base the evaporation rates on the annual average pan evaporation minus the 90th percentile annual precipitation for the geographical location, as contained in Appendix E.

(C) The system shall be designed with a five (5) foot operating depth, with three (3) feet of freeboard.

(2) **Land Application.** Design two (2) primary cells and one storage cell. Follow design guidelines stated in Subchapter 25 of this Chapter.

(A) Primary cells shall have sixty (60) days of retention time.

(B) Secondary cells shall have ninety (90) days of storage with the operating depth not to exceed ten (10) feet.

(d) **Aerated lagoon systems.** The following apply to all new aerated lagoon systems. Only partial-mix systems will be considered for systems with 30 day average concentration limits for BOD and TSS of 30 mg/l and 90 mg/l, respectively, as their basic permit requirement. Aerated lagoon systems will not consistently provide ammonia removal through the nitrification process so the effluent from these facilities may be toxic to aquatic life and thus cause whole effluent toxicity test failures.

(1) **Number of cells.** At least two aerated cells, in series, followed by one settling lagoon and provide a hydraulic retention time of at least two days.

(2) **Depth.** The design water depth shall be 10 to 15 feet.

(3) **Design Requirements.** Submit design calculations to the DEQ for review, and justify the use of any constants not listed.

(4) **Aeration requirements.** Oxygen requirements will depend on organic loading, required treatment, and

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concentration of suspended solids to be maintained in the aerated cells. Aeration equipment shall be capable of maintaining a minimum dissolved oxygen level of 2 mg/l in the lagoons at all times. In the absence of experimentally determined values, the design oxygen requirements shall be 1.8 lb O₂/lb BOD applied at maximum loading.

(5) **Additional information.** For a more detailed discussion of aerated lagoon design see *Design Manual Municipal Wastewater Stabilization Ponds*, U.S. Environmental Protection Agency, EPA-625/1-83-015 (1983). Also see *Wastewater Engineering: Treatment, Disposal & Reuse*, Metcalf & Eddy, Inc., 4th Edition, (2003).

(6) **Disinfection.** Disinfection shall be required for all lagoon systems proposed to discharge to "waters of the state" where the beneficial use of the receiving water body is designated in Oklahoma's Water Quality Standards (OAC 785:45252:730) as either "Primary Body Contact Recreational" or "Public or Private Water Supply".

[OAR Docket #22-778; filed 10-27-22]

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

[OAR Docket #22-779]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. Introduction
 - 252:690-1-1 [AMENDED]
 - 252:690-1-2 [AMENDED]
 - 252:690-1-3 [AMENDED]
 - 252:690-1-6 [AMENDED]
- Subchapter 3. Point Source Discharges
 - 252:690-3-11 [AMENDED]
 - 252:690-3-16 [AMENDED]
 - 252:690-3-18 [AMENDED]
 - 252:690-3-21 [AMENDED]
 - 252:690-3-26 [AMENDED]
 - 252:690-3-40 [AMENDED]
 - 252:690-3-47 [AMENDED]
 - 252:690-3-54 [AMENDED]
 - 252:690-3-60 [AMENDED]
 - 252:690-3-61 [AMENDED]
 - 252:690-3-64 [AMENDED]
 - 252:690-3-67 [AMENDED]
 - 252:690-3-71 [AMENDED]
 - 252:690-3-74 [AMENDED]
 - 252:690-3-82 [AMENDED]
 - 252:690-3-87 [AMENDED]
 - 252:690-3-91 [AMENDED]
 - 252:690-3-93 [AMENDED]
- Subchapter 5. Groundwater Protection
 - 252:690-5-10 [AMENDED]
 - 252:690-5-17 [AMENDED]
- Appendix A. Water Quality Standards Implementation Plan, Oklahoma Department of Environmental Quality [REVOKED]
- Appendix A. Water Quality Standards Implementation Plan, Oklahoma Department of Environmental Quality [NEW]
- Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [REVOKED]
- Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [NEW]

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

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

Appendix D. Whole Effluent Toxicity (WET) Testing Critical Dilutions and Dilution Series [REVOKED]

Appendix D. Whole Effluent Toxicity (WET) Testing Critical Dilutions and Dilution Series [NEW]

Appendix E. Equations for Implementation of Temperature Criteria to Protect the Fish and Wildlife Propagation Beneficial Use [REVOKED]

Appendix E. Equations for Implementation of Temperature Criteria to Protect the Fish and Wildlife Propagation Beneficial Use [NEW]

Appendix F. Equations for Implementation of Numerical Criteria for Toxic Substances to Protect the Fish and Wildlife Propagation Beneficial Use [REVOKED]

Appendix F. Equations for Implementation of Numerical Criteria for Toxic Substances to Protect the Fish and Wildlife Propagation Beneficial Use [NEW]

Appendix G. Equations for Implementation of Numerical Human Health and Raw Water Criteria to Protect the Fish Consumption and Public and Private Water Supply Beneficial Uses [REVOKED]

Appendix G. Equations for Implementation of Numerical Human Health and Raw Water Criteria to Protect the Fish Consumption and Public and Private Water Supply Beneficial Uses [NEW]

Appendix H. Equations for Implementation of Numerical Criteria to Protect the Agriculture Beneficial Use [REVOKED]

Appendix H. Equations for Implementation of Numerical Criteria to Protect the Agriculture Beneficial Use [NEW]

Appendix I. Performance-Based Effluent Monitoring Frequency Reductions and Increases [REVOKED]

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

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203. Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201.

ADOPTION:

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n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorizes DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

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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 1. INTRODUCTION

252:690-1-1. Purpose and applicability

This Chapter establishes guidance and requirements for DEQ jurisdictional areas for the implementation of Oklahoma's Water Quality Standards, found at OAC ~~785:45~~252:730, pursuant to 27A O.S. § 1-1-202(B). The DEQ's Water Quality Standards Implementation Plan is included as Appendix A. Included in Subchapter 3 of this Chapter are certain point source discharge implementation criteria formerly contained in OAC ~~785:46~~252:740. In addition, the applicable implementation provisions of the following DEQ rules apply:

- (1) OAC 252:205, "Hazardous Waste Management;"
- (2) OAC 252:220, "Brownfields;"
- (3) OAC 252:301, "Laboratory Accreditation;"
- (4) OAC 252:410, "Radiation Management;"
- (5) OAC 252:515, "Management of Solid Waste;"
- (6) OAC 252:606, "Discharge Standards;"
- (7) OAC 252:611, "General Water Quality;"
- (8) OAC 252:616, "Industrial Wastewater Systems;"
- (9) OAC 252:619, "Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems and Land Application;"
- (10) OAC 252:621, "Non-Industrial Flow-Through and Public Water Supply Impoundments Including Land Application;"
- (11) OAC 252:626, "Public Water Supply Construction Standards;"
- (12) OAC 252:631, "Public Water Supply Operation;"
- (13) OAC 252:641, "Individual and Small Public On-Site Sewage Treatment Systems;"
- (14) OAC 252:652, "Underground Injection Control;"
- (15) OAC 252:656, "Water Pollution Control Facility Construction;" and
- (16) OAC 252:710, "Waterworks and Wastewater Works Operator Certification."

252:690-1-2. Definitions

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

"Acute WET testing" means WET testing which measures short-term lethality to a specific aquatic animal test species as specified in OAC 252:690-3-29.

"Arithmetic mean" means the sum of the values of individual data points in a data set divided by the number of data points. This term is synonymous with arithmetic average.

"Background concentration" means the concentration of a substance in receiving water immediately upstream of, but not influenced by, a wastewater discharge.

"CAFO" means Concentrated Animal Feeding Operation.

"Chronic WET testing" means WET testing which measures long term lethal and sublethal effects to a specific aquatic animal test species as specified in OAC 252:690-3-29.

"Coefficient of variation (CV)" means, when used in the context of effluent data, the measure of an effluent distribution's variation relative to its mean. When used in the context of WET test acceptability, CV means the % variation among test replicates in either the control or the critical dilution.

"Conservative substance" means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or biochemical degradation.

"Critical dilution" means an effluent dilution, expressed as a percentage, representative of the dilution afforded a wastewater discharge according to the appropriate Q*-dependent chronic mixing zone equation for chronic WET testing. The critical dilution for acute WET testing is 100%.

"Defensible analytical data" means data traceable to a laboratory certified for that pollutant by—DEQ under OAC 252:301 or data accepted by EPA; data traceable to a municipal laboratory operated by a properly certified laboratory technician by OAC 252:710; or data generated by a state or federal agency laboratory with equivalent certification. Quality assurance procedures, including chain of custody records, shall be adequate and documentable. Quality control data required in the analytical method shall be available from the laboratory upon request.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Detectable concentration" means a concentration greater than zero (0) using a ninety-nine percent (99%) probability basis.

"Dilution series" means a set of proportional effluent dilutions for acute or chronic WET testing based on a specified critical dilution, which is typically the next-to-highest dilution in the series.

"Effluent-dominated receiving stream" means a stream which receives a point source discharge greater than or equal to one-third (1/3) of its 7Q2 flow.

"Engineer" means professional engineer registered in the State of Oklahoma.

"EPA" means the United States Environmental Protection Agency.

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"Geometric mean" means the antilog of the arithmetic average of the natural logarithms of the individual points in a data set.

"Intermittent toxicity" means two or more lethal or sublethal effect test failures of a routine acute or chronic WET test within any 18-month period.

"LC₅₀ (lethal concentration)" means the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

"Life of the permit" means a specific time frame from the date of the issuance of a permit until a new or renewed permit is issued.

"Load Allocation or LA" means the portion of a receiving water's TMDL that is attributed either to one of its existing or future nonpoint sources or to natural background sources.

"Log transformation" means the mathematical transformation of an observed data set which results in a data set consisting of the natural logarithms of the individual data points in the observed data set.

"Log-normally distributed" means a distribution of effluent data which is positively skewed.

"Major discharger" means an industrial facility which has a point rating greater than or equal to 80 according to the NPDES permit rating system for industrial discharges; a POTW with a design flow greater than or equal to 1 mgd; or any facility designated as such by EPA in conjunction with the state permitting authority.

"Mineral constituents" means chlorides, sulfates and total dissolved solids collectively.

"Measurable level" means a detectable concentration for which the analytical signal to noise ratio is significantly high to report a reliable single number. The measurable level corresponds to the lowest point at which the analytical calibration curve is determined based on analyses for the pollutant of concern.

"Municipal" means a publicly owned treatment works or facilities which are privately owned that generate only domestic waste including mobile home parks, home owner's associations, etc.

"Narrative water quality criterion" means statements or other qualitative expressions of chemical, physical, or biological parameters that are assigned to protect a beneficial use.

"Numerical water quality criterion" means concentrations or other quantitative measures of chemical, physical, or biological parameters that are assigned to protect a beneficial use.

"No Observed Effect Concentration-Lethal" or **"NOEC_L"** means the greatest tested effluent dilution in a WET test at and below which lethality to test organisms does not occur that is statistically different from the control (0% effluent) at the 95% confidence level.

"No Observed Effect Concentration-Sublethal" or **"NOEC_S"** means the greatest tested effluent dilution in a WET test at and below which a sublethal effect to test organisms does not occur that is statistically different from the control (0% effluent) at the 95% confidence level.

"Non-conservative substance" means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

"OAC" means Oklahoma Administrative Code.

"Once-through cooling water" means cooling water that is not recirculated.

"OWQS" means the Oklahoma Water Quality Standards, contained at OAC 785-45252:730.

"Permit cycle" means the life of a permit from the date of issuance to the date of expiration as specifically stated on a permit, unless the expiration of the permit is extended by operation of statute, rule or agreement of the permittee and DEQ.

"Period of Record" means a continuous period for which a facility's effluent data is reviewed for the purposes of characterizing the effluent.

"Persistent toxicity" means the repeated failure of an acute or chronic WET test. If the required WET testing frequency is monthly, repeated failure occurs upon the failure of two of the three consecutive monthly tests for the same test species. If the required WET testing frequency is other than monthly, repeated failure occurs upon the failure of the required test plus one of the two monthly retests for the same test species in the ensuing two-month period.

"Percent mortality" means 100% minus percent survival in a WET test effluent dilution.

"Positively skewed" means a data distribution which is asymmetric about its arithmetic mean with a tail in the positive direction.

"POTW" means ~~publically~~ publicly owned treatment works.

"Reasonable potential" means causes, or has a reasonable potential to cause or contribute to an exceedance of a water quality criterion.

"Robust Regression on Order Statistics (Robust ROS)" means a statistical method that computes a regression line to estimate values for non-detect data and combines these estimates with detected observations to compute sample statistics.

"RPF₉₅" means the reasonable potential factor for an effluent distribution, based on a 95% probability basis, for the purpose of determining whether an effluent limitation is required.

"RPF_{95(M)}" means the reasonable potential factor for an effluent distribution, based on a 95% confidence interval and 95% probability basis, and accounting for the size of the effluent data set, for the purpose of determining whether further effluent monitoring is required.

"Receiving water" means the water of the State to which a wastewater is discharged.

"Regulatory effluent flow" means the effluent flow, which is water quality criterion-dependent, used in determining reasonable potential and wasteload allocations for a substance.

"SMCRA" means the Surface Mining Control and Reclamation Act of 1977.

"Standard deviation (s_x)" means the standard deviation of an untransformed data set based on a sample of size N.

"**Standard deviation of log-transformed x ($\ln(x)$)**" means the standard deviation of a log-normally transformed data set based on a sample of size N .

"**Sublethal test failure**" means the statistically significant difference (at the 95% confidence level) between reproduction or growth of the test organism at or below the chronic critical dilution after completion of an EPA approved chronic test method.

"**T₉₅**" means the 95th percentile of the effluent temperature distribution (in °C) of sustained two-hour daily maximum effluent temperatures where effluent temperature is recorded continuously and the distribution of daily maximum effluent temperatures where temperature is recorded at discrete intervals of two hours or longer, provided that recording intervals for temperature do not exceed six hours.

"**TDS**" means total dissolved solids.

"**TIE**" means toxicity identification evaluation.

"**TRE**" means toxicity reduction evaluation.

"**Trigger Background concentration**" means the background concentration necessary to trigger reasonable potential for a substance to exceed an applicable criterion given a specified mean effluent concentration.

"**Wasteload allocation**" or "**WLA**" means the portion of a receiving water's TMDL that is allocated to one of its existing or future point sources of pollution.

"**WET limit**" means a WET testing limitation in the form of a NOEC_L, NOEC_S, or LC₅₀, the exceedance of which constitutes a permit violation.

"**WET testing**" means testing for whole effluent toxicity:

- (A) using an effluent dilution series based on a critical dilution,
- (B) with a specific aquatic animal species, and
- (C) utilizing EPA-approved testing methods.

252:690-1-3. Technical Acronyms

The following technical acronyms, when used in this Chapter, shall have the following meaning:

"**ΔT_{max}**" means the maximum temperature increase in °C at the edge of the temperature mixing zone.

"**7Q2**" means the 7 day low flow of a stream likely to occur with a 50% probability each year. The procedure for determining a site-specific 7Q2 is described at OAC ~~785:46252:740~~.

"**7T2**" means the 7 day maximum temperature likely to occur with a 50% probability each year. The procedure for determining a site-specific 7T2 is described at OAC ~~785:46252:740~~.

"**ACD**" means acute critical dilution.

"**BOD₅**" means 5-day biochemical oxygen demand.

"**BT/C ratio**" means the ratio of trigger background concentration to associated water quality criterion.

"**(BT/C)_{max}**" means the maximum BT/C ratio for a given criterion for which background monitoring is required as a permit condition.

"**C₉₅**" means the 95th percentile maximum likelihood effluent concentration of a substance. It is the product of C_{E(mean)} and RPF₉₅.

"**C_{95(M)}**" means the 95th percentile maximum likelihood effluent concentration of a substance, accounting for the size of the effluent data set. It is the product of C_{E(max)} and RPF_{95(M)}.

"**C_A**" means the acute numerical criterion for toxic substances.

"**C_B**" means background concentration.

"**C_C**" means the chronic numerical criterion for toxic substances.

"**C_d**" means the instream concentration of a substance resulting from a wastewater discharge.

"**C_{d(A)}**" means the instream concentration of a substance as determined by the acute mixing equation.

"**C_{d(c)}**" means the maximum instream concentration of a substance at the edge of the chronic mixing zone.

"**C_{d(FF)}**" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh.

"**C_{d(FFW)}**" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh and water.

"**C_{d(NRWQC)}**" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an EPA human health criterion for the consumption of fish flesh.

"**C_{d(RAW)}**" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a raw water column criterion.

"**C_{d(SS)}**" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture sample standard (SS).

"**C_{d(YMS)}**" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture yearly mean standard (YMS).

"**C_{E(max)}**" means the maximum concentration of a substance in an effluent data set.

"**C_{E(mean)}**" means mean effluent concentration.

"**C_{FF}**" means the numerical criterion for the protection of human health for the consumption of fish flesh.

"**C_{FFW)}**" means the numerical criterion for the protection of human health for the consumption of fish flesh and water.

"**C_{NRWQC)}**" means the EPA recommended national water quality criterion for the protection of human health for the consumption of fish flesh.

"**C_{RAW)}**" means the numerical criterion for protection of the raw water column.

"**C_{SS)}**" means agriculture sample standard numerical criterion, i.e., the historic segment averaged SS value from Appendix F of OAC ~~785:45252:730~~, unless data more representative of the receiving stream are available.

"**C_{YMS)}**" means agriculture yearly mean standard numerical criterion, i.e., the historic segment averaged YMS value from Appendix F of OAC ~~785:45252:730~~, unless data more representative of the receiving stream are available.

"**CBOD₅₎**" means 5-day carbonaceous biochemical oxygen demand.

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- "**CCD**" means chronic critical dilution.
- "**CPP**" means the Continuing Planning Process document required under Section 303(e) of the Clean Water Act.
- "**CWAC**" means cool water aquatic community.
- "**D**" means, in the context of a discharge to a lake through a pipe, the pipe diameter in feet.
- "**DML**" means daily maximum permit limitation.
- "**DML_A**" means the toxic substance acute criterion DML.
- "**DML_C**" means the toxic substance chronic criterion DML.
- "**DML_{CL}**" means agriculture criterion-based DML for chlorides.
- "**DML_{FF}**" means the human health/fish flesh DML.
- "**DML_{FFW}**" means the human health/fish flesh and water DML.
- "**DML_{HH}**" means human health-based DML.
- "**DML_{RAW}**" means the raw water column DML.
- "**DML_{SO4}**" means agriculture criterion-based DML for sulfates.
- "**DML_T**" means the temperature based DML.
- "**DML_{TDS}**" means agriculture criterion-based DML for total dissolved solids (dried at 180°C).
- "**DML_{TOX}**" means toxic substance-based DML.
- "**DMR**" means Discharge Monitoring Report.
- "**DO**" means dissolved oxygen.
- "**gpd**" means gallons per day.
- "**HLAC**" means habitat-limited aquatic community.
- "**ICIS**" means integrated compliance information system.
- "**LTA**" means long term average.
- "**LTA_A**" means the toxic substance acute numerical criterion LTA.
- "**LTA_C**" means the toxic substance chronic numerical criterion LTA.
- "**LTA_{FF}**" means the fish flesh human health criterion LTA.
- "**LTA_{FFW}**" means the fish flesh and water human health criterion LTA.
- "**LTA_{RAW}**" means the raw water column criterion LTA.
- "**LTA_{SS}**" means the agriculture sample standard LTA.
- "**LTA_T**" means the temperature criterion LTA.
- "**LTA_{TOX}**" means the limiting toxic substance-based LTA, i.e., the smallest of LTA_A or LTA_C, as applicable.
- "**LTA_{YMS}**" means the agriculture yearly mean standard LTA.
- "**MAL**" means monthly average permit limitation.
- "**MAL_A**" means the toxic substance acute criterion MAL.
- "**MAL_C**" means the toxic substance chronic criterion MAL.
- "**MAL_{CL}**" means agriculture criterion-based MAL for chlorides.
- "**MAL_{FF}**" means the human health/fish flesh MAL.
- "**MAL_{FFW}**" means the human health/fish flesh and water MAL.
- "**MAL_{RAW}**" means the raw water column MAL.
- "**MCL**" means maximum contaminant level (when used in the context of primary drinking water standards).
- "**MAL_{HH}**" means human health-based MAL.
- "**MAL_{SO4}**" means agriculture criterion-based MAL for sulfates.
- "**MAL_T**" means temperature MAL.
- "**MAL_{TDS}**" means agriculture criterion-based MAL for total dissolved solids (dried at 180°C).
- "**MAL_{TOX}**" means toxic substance-based MAL.
- "**mgd**" means million gallons per day.
- "**mg/l**" means milligrams per liter.
- "**MQL**" means minimum quantifiable level.
- "**N**" means the number of individual data points, collected over time, in an effluent or background data set.
- "**N_m**" means the per month monitoring frequency where a permit limitation is established. When used in the context of temperature limitations, N_m is equal to four times N_w (i.e., N_m = 4 x N_w).
- "**N_w**" means the per week monitoring frequency where a temperature permit limitation is established.
- "**NRWQC**" means the National Recommended Water Quality Criteria, publication no. EPA 822-Z-99-001, April 1999.
- "**PBCR**" means Primary Body Contact Recreation.
- "**PCS**" means Permit Compliance System, an EPA database that tracks NPDES permit compliance.
- "**Q***" means the ratio of the regulatory effluent flow to the regulatory receiving water flow.
- "**Q_e**" means regulatory effluent flow.
- "**Q_{e(30)}**" means the Q_e that is the highest monthly average flow over the two year period of record for an industrial facility.
- "**Q_{e(D)}**" means the Q_e that is the lesser of the design flow for a municipal POTW or the design flow listed in the Section 208 Areawide Basin Plan.
- "**Q_{e(LTA)}**" means the Q_e that is the arithmetic (long term) average flow over the two year period of record for an industrial facility.
- "**Q_u**" means regulatory receiving water flow upstream of a point of wastewater discharge.
- "**Q_{u(7Q2)}**" means the same as 7Q2.
- "**Q_{u(LTA)}**" means the Q_u that is the mean annual (long term) receiving water flow.
- "**Q_{u(STA)}**" means the Q_u that is the short term average receiving water flow and is equal to Q_{u(LTA)} x 0.68.
- "**SBCR**" means Secondary Body Contact Recreation
- "**SNC**" means significant noncompliance.
- "**SS**" means sample standard.
- "**s.u.**" means standard units for the measurement of pH.
- "**T₉₅**" means 95th percentile effluent temperature in °C.
- "**T_a**" means regulatory ambient temperature in °C.
- "**TBLL**" means technically based local limits
- "**TDS**" means total dissolved solids.
- "**TIE**" means toxicity identification evaluation.
- "**TMDL**" means total maximum daily load.
- "**TRC**" means total residual chlorine.
- "**TRE**" means toxicity reduction evaluation.
- "**TRO**" means total residual (halogenated) oxidants.
- "**µg/l**" means micrograms per liter.
- "**W**" means, in the context of a discharge to a lake through an open channel (i.e., canal), the channel width in feet.
- "**WAL**" means weekly average permit limitation.
- "**WAL_T**" means temperature WAL.
- "**WET**" means whole effluent toxicity.

"WLA" means waste load allocation.

"WLA_A" means a toxic substance acute criterion WLA.

"WLA_C" means a toxic substance chronic criterion WLA.

"WLA_{FF}" means a human health/fish flesh criterion WLA.

"WLA_{FFW}" means a human health/fish flesh and water criterion WLA.

"WLA_{RAW}" means a raw water column criterion WLA.

"WLA_{SS}" means an agriculture sample standard WLA.

"WLA_T" means a temperature criterion WLA.

"WLA_{YMS}" means an agriculture yearly mean standard WLA.

"WQMP" means the statewide Section 208 Water Quality Management Plan.

"WWAC" means warm water aquatic community.

"YMS" means yearly mean standard.

252:690-1-6. Relationship to other rules

References are made in these rules to water quality standards, water quality criteria, beneficial uses, antidegradation, and mixing zones. Rules regarding these topics are promulgated by the ~~OWRB~~DEQ at OAC ~~785:45252:730~~, as approved by EPA. References are made in these rules to water quality standards implementation, effluent characterization, reasonable potential, and regulatory receiving stream flows. Rules regarding these topics are promulgated by the ~~OWRB~~DEQ at OAC ~~785:46252:740~~. Provisions in these rules provide additional procedures to implement the OWRB water quality standards, water quality criteria, beneficial uses, antidegradation, and mixing zone rules for regulatory purposes.

SUBCHAPTER 3. POINT SOURCE DISCHARGES

252:690-3-11. Receiving water background characterization requirements

- (a) **Long term average.** Where required, the DEQ will calculate a LTA background level of a substance as a geometric mean unless otherwise specified.
- (b) **Background data sources.** Background data must be defensible analytical data and be representative of the receiving water's current upstream conditions. The DEQ will use data collected and reported in accordance with a background monitoring requirement in a previous permit where available.
- (c) **Unavailability of background data.** Where no background data is available, the background is assumed to be zero.
- (d) **Size of background data set.** At least 10 data points are required for a background data set to be considered complete. The DEQ may use a partial background data set for reasonable potential purposes if the data is the only defensible analytical data available. Where the use of a partial background data set results in demonstration of reasonable potential, the permit will include effluent limitations based on a zero background level, which may have a delayed effective date of no more than two years. The permit will require the permittee to complete the

background monitoring, at which time the DEQ will reopen the permit, if necessary, to adjust permit limitations according to the background level determined from a complete background data set.

(e) **Alternative Method for Determination of 7Q2.**

(1) A permittee may use an alternative method for determining a 7Q2 as allowed by OAC ~~785:46252:740-1-6~~ (~~e~~)~~252:740-1-6(c)~~. The 7Q2 calculated from the historical record may be modified to incorporate anticipated upstream flow releases provided the source of water is owned or controlled by a federal governmental entity and the following information is submitted to the DEQ:

- (A) a determination that a reliable source of upstream flow exists;
- (B) documentation that the upstream source of water:
 - (i) includes water quality improvement as an authorized use, or
 - (ii) includes allocated storage for water quality improvement;
- (C) documentation that the upstream source of water is governed by a water control plan developed and implemented pursuant to 33 CFR § 222.5; and
- (D) a demonstration that the alternative 7Q2 is identified in the most recently published State Water Quality Management Plan.

(2) The DEQ will include any approved alternative 7Q2 as a permit limit in any discharge permit. Said limit shall be stated as a minimum daily flow measured at the nearest upstream flow gage.

(3) In the event that the alternative 7Q2 is not consistently attained, the DEQ may re-open the permit and re-calculate the effluent limitations using the actual receiving stream flows.

252:690-3-16. Requirements specific to agriculture criteria

- (a) **Historical data.** If site-specific background defensible analytical data is not available, the DEQ will use the YMS and SS criteria in OAC ~~785:45252:730~~, Appendix F, to determine the background concentrations of the mineral constituents. In the absence of listed YMS and SS criteria specific to the receiving water of interest, the segment averaged YMS and SS criteria are used to establish the background concentrations of the mineral constituents. C_B is calculated according to Equation C-11 in Appendix C.
- (b) **Site-specific background data available.** Where a site specific background data set of at least 10 data points is available, the DEQ may use the arithmetic average of the site specific background data set instead of a background level determined from the segment-averaged YMS and SS values in OAC ~~785:45252:730~~, Appendix F.
- (c) **Background monitoring.** Where agriculture criteria-based limitations are established in a permit, the DEQ may require background monitoring of the limited mineral constituent(s) to determine site-specific conditions.

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252:690-3-18. Reasonable potential to exceed narrative toxicity criterion for the Fish and Wildlife Propagation beneficial use utilizing whole effluent toxicity

See OAC [785:46252:740](#).

252:690-3-21. Reasonable potential for ammonia

See OAC [785:46252:740](#).

252:690-3-26. Monitoring frequencies for ammonia

Where ammonia limits are toxicity-based, permits will require the permittee to monitor ammonia at a frequency of three (3) times per week. At any time during the term of a permit, where the permittee has completed twelve (12) consecutive reporting periods subject to toxicity based ammonia limits where the highest daily maximum concentration did not exceed 1.5 times the toxicity based MAL and there were not ~~exceedences~~ exceedances of the monthly average or daily maximum limits for ammonia, the permittee may request a reduction of the ammonia monitoring frequency to one (1) time per week. If WET test failures attributable to ammonia are experienced at any time during the term of a permit, or there are ~~exceedences~~ exceedances of the monthly average limit or daily maximum limit for ammonia, the ammonia monitoring frequency must be continued at or be returned to three (3) times per week. If there are no WET test failures attributable to ammonia and no ~~exceedences~~ exceedances of either the monthly average limit or the daily maximum limit for ammonia following a reduction of the monitoring frequency for toxicity-based ammonia limits to one (1) time per week, the reduced ammonia monitoring frequency may be continued in the ensuing permit cycle. This paragraph does not apply to ammonia monitoring required to be performed concurrently with WET testing.

252:690-3-40. Endpoint and test failure criteria for chronic tests

The endpoint for lethality for chronic WET testing and retesting is the $NOEC_L$. The endpoint for sublethality for routine chronic WET testing and retesting is the $NOEC_S$. Statistical analysis must be consistent with the methods described in the documents referenced in OAC 252:690-3-29. For chronic test failure, see OAC [785:45252:730](#).

252:690-3-47. Reasonable potential to exceed temperature criterion for the implementation of temperature criteria to protect the Fish and Wildlife Propagation beneficial use

See OAC [785:46252:740](#).

252:690-3-54. Reasonable potential determination for the implementation of numerical criteria for toxic substances to protect the Fish and Wildlife Propagation beneficial use

$C_{d(A)}$ and $C_{d(C)}$ are calculated for each applicable criterion where a pollutant is present at measurable levels in the effluent or where an analytical detection level greater than the established MQL has been utilized. Also see OAC [785:46252:740](#).

252:690-3-60. Receiving water characterization for the implementation of dissolved oxygen criteria to protect the Fish and Wildlife Propagation beneficial use

DO modeling will be performed under conditions that are most critical with respect to processes that determine instream concentration of DO as outlined below.

(1) **Flow.** Background flow for models shall be set at the higher of the seven-day, two-year low flow for the study area or 1 cfs. When a daily flow record of ten years or more exists, a seasonal 7Q2 may be calculated and applied for streams designated as HLAC or WWAC. Also see OAC [785:46252:740](#).

(2) **Temperature.** The seasonal regulatory temperatures specified in the OWQS shall be modeled as background conditions unless site-specific data is available. If at least one year of average daily stream temperature values is available, the upper 90th percentile value calculated from the dataset for the season will be used.

(3) **Water quality constituents.** Where available, the long term average of measured values will be used to establish receiving water conditions. For seasonal analyses, values calculated from the dataset for the season shall be used. For simple models, assumed conditions estimated from similar streams in the area may be used.

252:690-3-61. Reasonable potential determination for the implementation of dissolved oxygen criteria to protect the Fish and Wildlife Propagation beneficial use

See OAC [785:46252:740](#).

252:690-3-64. Implementation of human health criteria for toxic substances to protect the Fish Consumption beneficial use

For the implementation of human health criteria for conservative substances, see OAC 252:690-3-64 through 3-70. These criteria only apply to receiving waters not designated as HLAC in Appendix A of OAC [785:45252:730](#).

252:690-3-67. Reasonable potential determinations in the implementation of human health criteria for toxic substances to protect the Fish Consumption beneficial use

Where a pollutant is present at measurable levels in an effluent or where an analytical detection level greater than the established MQL has been utilized, $C_{d(FF)}$ and $C_{d(NRWQC)}$ are calculated. Also see OAC ~~785:46~~252:740.

252:690-3-71. Implementation of human health and raw water criteria for toxic substances to protect the Public and Private Water Supply beneficial use

For the implementation of human health and raw water criteria for conservative substances, see OAC 252:690-71 through 77. These criteria only apply to receiving waters designated in Appendix A of OAC ~~785:45~~252:730 with the Public and Private Water Supply beneficial use.

252:690-3-74. Reasonable potential determination for the implementation of human health and raw water criteria for toxic substances to protect the Public and Private Water Supply beneficial use

Where a pollutant is present at measurable levels in an effluent or where an analytical detection level greater than the established MQL has been utilized, $C_{d(FFW)}$ and $C_{d(RAW)}$ are calculated. Also see OAC ~~785:46~~252:740.

252:690-3-82. Reasonable potential to exceed YMS and SS criteria

Where agriculture criteria are applicable, $C_{d(YMS)}$ and $C_{d(SS)}$ are calculated for each mineral constituent. Also see OAC ~~785:46~~252:740.

252:690-3-87. Implementation of criteria to protect the Aesthetics beneficial use

(a) Limitations and monitoring requirements for pollutants from previous permits are retained.

(b) Limitations and monitoring requirements may be established on a case-by-case basis to protect the aesthetics beneficial use of the receiving water established in OAC ~~785:45~~252:730.

(c) For effluents containing lignins, tannins, dyes, and other organic or inorganic chemicals that cause true color, the narrative water quality criterion for color shall be implemented by limiting the instream concentration after mixing to 70 Platinum-cobalt true color units based on a simple mass balance calculation. The following regulatory effluent flows apply for the implementation of the color criterion to protect the Aesthetics beneficial use:

- (1) for industrial facilities, $Q_{e(30)}$; and
- (2) for municipal facilities, $Q_{e(D)}$.

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

(a) When MALs have been established in a previous permit and a parameter(s) has been monitored for one complete permit cycle (five years), performance-based monitoring frequency reductions or increases will be considered.

(1) Except for ammonia, when a permittee has experienced:

(A) no permit limit violation of any kind for a limited parameter during the permit cycle, a performance-based monitoring frequency reduction may be granted according to Table I-1 in Appendix I.

(B) a non-SNC permit limit violation during the permit cycle, the permittee is ineligible for a performance-based monitoring frequency reduction for that parameter for the ensuing permit cycle.

(C) SNC violations for a parameter during the permit cycle, the permittee is:

- (i) ineligible for a performance-based monitoring frequency reduction for that parameter for the ensuing permit cycle, and
- (ii) a monitoring frequency increase is required in accordance with Table I-2 in Appendix I.

(2) Permittees may request toxicity-based ammonia limit monitoring frequency reductions according to 252:690-3-26 or WET testing frequency reductions according to 252:690-3-42.

(3) The monitoring frequency for a metal may be reduced to once every six (6) months if:

(A) the permit includes a long-term average effluent concentration for the permit cycle of less than ten percent (10%) of the Monthly Average Concentration Limit;

(B) it no longer exhibits reasonable potential (either from monitoring or effluent limit);

(C) there is a limit for that parameter in a previous permit that cannot be removed; and

(D) the parameter is not causing the receiving water body to be listed as a Category 5 water body in Oklahoma's Integrated Report.

(b) Performance-based monitoring frequency reductions shall not be based on a weekly average, a daily minimum or a daily maximum concentration limit.

(c) The permit frequency reductions stated in this Section and in Appendix I do not affect the need or number of control tests to be undertaken as required in Appendix A of 252:606.

(d) In accordance with ~~785:45-5-10~~252:730-5-10 and OAC ~~785:45-5-16~~252:730-5-16, no frequency reduction shall be allowed for bacteriological limitations.

(e) Any control test undertaken in accordance with OAC 252:606, Appendix A, shall be reported on the DMRs as required by 40 CFR § 122.41 (I)(4)(ii), provided the control test sample meets all the sample protocol requirements as contained in the OPDES permit.

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252:690-3-93. Monitoring for a nutrient limited watershed

A permittee shall monitor monthly for total nitrogen and/or total phosphorus if the discharge is to a nutrient limited watershed as designated in OAC ~~785:45~~252:730.

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252:690-5-10. Land application of Biosolids

Any person or entity engaged in the land application of biosolids must comply with the requirements for site restrictions, application rates, soil and vegetation criteria, record

keeping, sampling, disposal and constituent prohibitions, and closure at ~~OAC 252:648~~OAC 252:606-8 to protect groundwater quality.

252:690-5-17. Solid waste disposal sites

The owner/operator of any solid waste disposal site must comply with the requirements of OAC ~~252:510~~ ~~or~~ ~~252:520~~252:515, as appropriate, to protect groundwater quality.

**APPENDIX A. WATER QUALITY STANDARDS IMPLEMENTATION PLAN, OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY [REVOKED]**

**APPENDIX A. WATER QUALITY STANDARDS IMPLEMENTATION PLAN, OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY [NEW]**

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PART III. PUBLIC AND INTERAGENCY PARTICIPATION

PART I. INTRODUCTION

(a) STATUTORY AUTHORITY.

27A O.S. §1-1-202(B) mandates each of the state's environmental agencies to promulgate a Water Quality Standards Implementation Plan (WQSIP) by July 1, 2001, for its jurisdictional areas

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of environmental responsibility in compliance with the Administrative Procedures Act and pursuant to the provisions of that section. After initial promulgation, each state environmental agency is required to review its WQSIP at least every three years thereafter to determine whether revisions to the plan are necessary.

(b) **DEFINITIONS AND TERMS (not included in OAC 252:690-1-2 or OAC 252:690-1-3).**

"**40 CFR**" means Title 40 of the Code of Federal Regulations.

"**Section 106**" means Section 106 of the CWA, which provides annual grants for water quality management activities and special projects.

"**Section 301**" means Section 301 of the CWA, which requires the achievement of EPA-established effluent limitations for industrial and municipal point source dischargers.

"**Section 303**" means Section 303 of the CWA, which requires states to review and, as necessary, revise their water quality standards at least every three years.

"**Section 303(d)**" means Section 303(d) of the CWA, which requires states to identify waters that do not or are not expected to meet applicable water quality standards with technology-based controls alone (sometimes referred to as the 303(d) List). States establish priority rankings for the listed waters, taking into account pollution severity and existing and designated beneficial uses of the waters. States must develop TMDLs for waters on this list according to priority rankings.

"**Section 303(e)**" means Section 303(e) of the CWA, which requires each state to prepare a CPP document.

"**Section 306**" means Section 306 of the CWA, which directs the promulgation of effluent limitations and standards of performance for certain categories of industries.

"**Section 307**" means Section 307 of the CWA, which provides the process for establishing effluent limitations for those pollutants otherwise known as "priority" pollutants, including pretreatment standards of performance for industrial facility discharges to POTWs.

"**Section 401**" means Section 401 of the CWA, which requires applicants for federal licenses or permits for the construction or operation of facilities which may result in discharges into navigable waters to provide the licensing or permitting agency a certification from the state in which the discharge originates or will originate or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate.

"**Section 402**" means Section 402 of the CWA, which establishes the National Pollutant Discharge Elimination System (NPDES).

"**AO**" means an Administrative Order.

"**ARAR**" means appropriate, relevant and applicable requirements, when used in the context of Superfund and Brownfields-related investigations and remediations.

"**BMP**" means Best Management Practice(s), a technique determined to be the most effective, practical means of preventing or reducing pollutant discharges to achieve water quality goals. The term is generally applied in the context of nonpoint sources.

"**BUMP**" means Beneficial Use Monitoring Program, a program developed by the OWRB pursuant to 27A O.S. §1-3-101, for monitoring the state's surface and groundwater quality for the purpose of determining compliance with the OWQS and the effectiveness of water quality management activities.

"**CAA**" means the Clean Air Act and amendments thereto.

"**CEI**" means Compliance Evaluation Inspection.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act, also known as Superfund (see also SARA).

"**CFR**" means Code of Federal Regulations.

"**CO**" means Consent Order.

"**Conventional Pollutants**" means the following five pollutants: 5-day biochemical oxygen demand (BOD₅) or, alternatively, carbonaceous biochemical oxygen demand, (CBOD₅), suspended solids, oil and grease, fecal coliform and pH.

"**Corp Comm**" means the Oklahoma Corporation Commission.

"**CPP**" means the Continuing Planning Process document, which describes present and planned water quality management programs and the strategy used by the State in conducting these programs. Procedures for developing OPDES permit limitations utilizing the OWQS and OWQS Implementation Criteria are contained in this document.

"**CWA**" means the Clean Water Act and amendments thereto.

"**DEQ**" means the Oklahoma Department of Environmental Quality.

"**DMR**" means Discharge Monitoring Report, a report submitted to the WQD on a monthly basis via a specialized form by OPDES permittees in accordance with the effluent limitations and monitoring requirements of such permit and standard conditions thereof. Information provided on the DMR is entered into EPA's Permit Compliance System (see PCS) or Integrated Compliance Information System (see ICIS).

"**ECLS**" means the Environmental Complaints and Local Services Division of the DEQ.

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"**ELG**" means Effluent Limitations Guideline, one of a series of technology-based effluent limitations standards, either for direct discharge to navigable waters or for discharge to a POTW, established for certain categories of industries pursuant to Sections 306 and 307 of the CWA.

"**EPA**" means the Environmental Protection Agency.

"**EPA Region 6**" means the EPA Region 6 office in Dallas, Texas.

"**Fish and Wildlife Propagation**" means the OWQS beneficial use designation for promoting fish and wildlife propagation for the fishery classifications of HLAC, WWAC, CWAC and Trout Fishery (Put and Take).

"**Fish Consumption**" means the OWQS beneficial use designation for the protection of human health for the consumption of fish flesh.

"**HQW**" means High Quality Water, defined as a water of the state which possesses an existing water quality which exceeds that necessary to support the propagation of fishes, shellfishes, wildlife, and recreation in and on the water, and which is designated as such in OAC 252:730, Appendix A.

"**IU Permit**" means Industrial User Permit, a permit issued in accordance with the National Pretreatment Regulation at 40 CFR Part 403 and, as appropriate, the categorical pretreatment standards at 40 CFR Parts 405 through 499.

"**LPD**" means the Land Protection Division (formerly the Waste Management Division) of the DEQ.

"**LUST**" means leaking underground storage tank.

"**MCL**" means maximum contaminant level.

"**MSGP**" means an industrial Multi Sector General Permit for the discharge of storm water.

"**MS4**" means Municipal Separate Storm Sewer System.

"**NELAC**" means the National Environmental Laboratory Accreditation Council.

"**Nonpoint source**" means a source without a well defined point of origin.

"**Non-pretreatment program POTW**" means a POTW receiving industrial wastewater discharges which does not have an approved pretreatment program, is not in the process of developing a pretreatment program, and has not been directed to develop a pretreatment program.

"**NOV**" means Notice of Violation.

"**NPDES**" means the National Pollutant Discharge Elimination System, as authorized by Section 402 of the CWA. The DEQ has received delegation of the NPDES program in Oklahoma, except for certain jurisdictional areas related to agriculture and the oil and gas industry retained by ODA and Corp Comm, for which EPA has retained permitting authority. The NPDES program is implemented in Oklahoma via the OPDES program pursuant to the OPDES Act and in accordance with the Memorandum of Agreement between the DEQ and EPA relating to administration and enforcement of the delegated NPDES program.

"**NRC**" means the U.S. Nuclear Regulatory Commission.

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

"**OBDA**" means the Oklahoma Brine Development Act.

"**OCC**" means the Oklahoma Conservation Commission.

"**ODA**" means the Oklahoma Department of Agriculture.

"**ODM**" means the Oklahoma Department of Mines.

"**OPDES**" means Oklahoma Pollutant Discharge Elimination System (see also NPDES).

"**OPDES Act**" means the Oklahoma Pollutant Discharge Elimination System Act.

"**OPDES Permit**" means a permit issued pursuant to the OPDES Act.

"**OPDES Permitting Section**" means the Wastewater Discharge Permit Section of the DEQ's Water Quality Division.

"**ORW**" means Outstanding Resource Water, defined as a water of the state which constitutes an outstanding resource or is of exceptional recreational and/or ecological significance, and which is designated as such in OAC 252:730, Appendix A.

"**O.S.**" means Oklahoma Statutes.

"**OSHA**" means the Occupational Safety and Health Act and amendments thereto.

"**OWQS**" means the Oklahoma Water Quality Standards, established in OAC 252:730, as approved by EPA.

"**OWQScreen**" means a spreadsheet application package developed by the Wastewater Discharge Permit Section, Water Quality Division, for screening point source discharges against OWQS criteria and developing OPDES permit limitations.

"**OWRB**" means the Oklahoma Water Resources Board.

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"**Plan**" means Water Quality Standards Implementation Plan.

"**Point Source**" means any discernible, confined and discrete conveyance or outlet, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged into waters of the state. The term "point source" shall not include agricultural storm water runoff and return flows from irrigated agriculture.

"**PPWS**" means Public and Private Water Supply, an OWQS beneficial use designation for the protection of human health for the consumption of water and consumption of fish flesh and water. This term is not synonymous with primary and secondary drinking water standards, as defined in OAC 252:631, Appendix A.

"**SARA**" means the Superfund Amendments and Reauthorization Act (see also CERCLA).

"**Scenic River**" means a river or stream so designated pursuant to the Oklahoma Scenic Rivers Act. A scenic river is automatically considered an ORW.

"**SDWA**" means the Safe Drinking Water Act and amendments thereto.

"**SEL**" means the State Environmental Laboratory of the DEQ's Customer Services Division.

"**SWP3**" means Storm Water Pollution Prevention Plan.

"**SWS**" means Sensitive Water Supply, defined as a water of the state which constitutes a sensitive public and private water supply, and which is designated as such in OAC 252:730, Appendix A.

"**TBLL**" means, in the context of the pretreatment program, Technically Based Local Limits.

"**Technology-based limitation**" means an effluent limitation based on various levels of technologically-achievable performance.

"**UAA**" means Use Attainability Analysis.

"**UIC**" means Underground Injection Control.

"**USAP**" means Use Support Assessment Protocols, as defined at OAC 252:740.

"**USFWS**" means the United States Fish and Wildlife Service.

"**USGS**" means the United States Geological Survey.

"**Water quality-based limitation**" means an effluent limitation required to attain and maintain water quality standards.

"**WQD**" means the Water Quality Division of the DEQ.

"WQS Implementation Criteria" means water quality standards implementation criteria, procedures used to implement the OWQS, including mixing zones, regulatory effluent and receiving water flows, determination of effluent wasteload allocations and criteria long term average concentrations, determination of permit limitations and antidegradation policy implementation. Statewide WQS Implementation Criteria of general applicability are found at OAC 252:740. Water quality standards implementation criteria for facilities under DEQ jurisdiction are found in OAC 252:690 and the CPP.

"WQSIP" means Water Quality Standards Implementation Plan.

(c) **REQUIRED WQSIP ELEMENTS.**

Pursuant to 27A O.S. §1-1-202(B), each agency's WQSIP must include eight elements for each of its jurisdictional areas of environmental responsibility. The eight required elements are:

(1) **Compliance with antidegradation requirements and protection of beneficial uses.**

This element describes the processes, procedures and methodologies utilized to ensure that programs within jurisdictional areas of environmental responsibility comply with antidegradation standards and lead to:

- (A) Maintenance of water quality where beneficial uses are supported.
- (B) Removal of threats to water quality where beneficial uses are in danger of not being supported.
- (C) Restoration of water quality where beneficial uses are not being supported.

(2) **Application of USAP.** This element describes the procedures to be utilized by the agency in the application of USAP to make impairment determinations. USAP implementation criteria are found at OAC 252:740. The procedure by which a DEQ program area utilizes USAP in making waterbody beneficial use impairment determinations, or the manner in which USAP-derived support/impairment information is utilized in program area functions is described. USAP studies are spatial/temporal waterbody investigations utilizing established numerical criteria and/or implementation guidelines to determine whether existing and designated beneficial uses are being supported or not supported.

(3) **Description of programs affecting water quality.** This element describes the various agency programs and subprograms within each jurisdictional area of environmental responsibility. A program area is described in sufficient detail to convey the manner and process by which surface water quality standards or groundwater protection implementation is achieved.

(4) **Technical information and procedures for implementation.** This element includes technical information and procedures to be utilized in implementing the WQSIP. Technical information, databases, software programs and operational procedures, be they of federal or agency division/program area origin, that are utilized by a program area to implement the DEQ WQSIP are described.

(5) **Integration of WQSIP into water quality management activities.** This element describes how agency administrative rules, program area policies and guidance, and standardized methods of conducting business have been or will be developed to facilitate integration of the WQSIP into the water quality management activities within each jurisdictional area of environmental responsibility.

(6) **Compliance with mandated statewide water quality requirements.** This element describes the manner in which an agency will comply with mandated statewide requirements affecting water quality developed by other state environmental agencies including, but not limited to, TMDL development, point source wastewater discharge permitting activities, and NPS pollution prevention programs. The manner in which a program area utilizes statewide requirements affecting water quality is described in sufficient detail to demonstrate compliance with those requirements.

(7) **Public and interagency participation.** This element requires a summary of written comments and testimony received pursuant to all federal and state interagency reviews and public meetings held by the state environmental agency, and the state environmental agency's response thereto, for the purpose of providing public participation related to its WQSIP. This element applies to both the initial WQSIP promulgation and revisions thereto.

(8) **Evaluation of the effectiveness of agency activities.** This element describes objective methods and means to evaluate the effectiveness of activities conducted pursuant to an agency's WQSIP in achieving water quality standards. BUMP and USAP assessments are the two primary means by which the effectiveness of water quality management activities may be evaluated on a continuing basis. Fish community biotrend monitoring and regulated activity self-monitoring provide additional means of evaluating program effectiveness.

(A) **BUMP.** The OWRB's Beneficial Use Monitoring Program was created in 1998 at the direction of the State Legislature. The program's monitoring is composed of five key elements, as follows:

- (i) Periodic river and stream monitoring, itself composed of two components:
 - (1) Monitoring at a series of fixed locations, determined by the OWRB in consultation with other state environmental agencies.
 - (2) Monitoring at a series of stations which rotate on an annual basis, the location and monitoring parameters of which are based largely on the state's list of impaired waterbodies (the so-called 303(d) list, established pursuant to Section 303(d) of the CWA).
- (ii) Fixed station load (flow) monitoring.
- (iii) Fixed station lakes monitoring.
- (iv) Fixed station groundwater monitoring.
- (v) Intensive investigative sampling involving identified impaired waters, primarily for the purpose of documenting the source of the impairment and determining appropriate restorative actions.

(B) **USAP.** Waterbody impairment and restoration studies, field surveys, monitoring results, or other available data will be assessed utilizing USAP.

(C) **Fish community biotrends monitoring.** This activity provides an additional biologically-oriented measure of the effectiveness of water quality management activities. Together, BUMP data, USAP studies and Fish Community Biotrends monitoring provide the best overall measures of water quality standards compliance and beneficial use support.

(D) **Regulated activity self-monitoring.** Site-specific monitoring of surface waters and groundwater outside the scope of BUMP and USAP is available to the DEQ on a continuing basis from the regulated community through its various regulatory programs.

- (i) **OPDES permits.** Self-monitoring required by OPDES permits issued by the Department. Continued compliance of point source dischargers in a waterbody segment with their OPDES permit limitations, as assessed through self monitoring,

should correlate with a waterbody's compliance with state water quality standards as assessed through BUMP and USAP investigations. Likewise, self-monitoring of groundwater included in an OPDES permit is useful for assessing groundwater quality management where surface impoundments and/or land application are utilized.

- (ii) **Land Protection activities.** Self monitoring of surface waters and groundwater required by solid waste, hazardous waste, underground injection and site remediation regulatory activities yields valuable information for determining compliance with water quality standards and the effectiveness of Land Protection activities.
- (iii) **Water supplies.** Self-monitoring of public and private water supplies (both surface waters and groundwater) provides valuable information which may indicate present or impending problems in the maintenance of, or success in the restoration of, the suitability of those surface water supplies and groundwater sources for the public and private water supply beneficial use.

(d) **DEQ JURISDICTIONAL AREAS.**

The jurisdictional areas of the Department of Environmental Quality are listed in 27A O.S. §1-3-101(B), 27A O.S. § 2-6-103(B)(2), and 82 O.S. § 1085.30.

PART II. WQSIP ELEMENTS BY JURISDICTIONAL AREA

(a) **GENERAL**

The eight required WQSIP elements are presented by jurisdictional area, and in some cases individual program areas within the scope of the jurisdictional area. DEQ's WQSIP will evolve to adapt to future changes in the OWQS and WQS implementation criteria.

(b) **WATER QUALITY PLANNING**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.**

The antidegradation policy in the OWQS prohibits an increase in loading that would impair or further impair an existing use. In addition, the policy prohibits degradation of outstanding resource waters and high-quality waters, even if existing and designated uses would still be attained. Current CPP procedures regarding the 303(d) list, TMDL's, and loading allocations for both point and non-point sources of pollution are consistent with these provisions. DEQ may also adopt variances and site-specific criteria as set forth in 27A O.S. § 2-6-103(B).

(2) **Application of USAP.** Although evaluation of beneficial use support is not a water quality planning responsibility, its TMDL function is closely related and is utilized on a continuing basis to identify water bodies where USAP might be utilized to reevaluate a waterbody's beneficial uses. USAP, water quality standards, and EPA guidance will be considered to set appropriate target end points in the development of TMDLs.

(3) **Description of programs affecting water quality.** The CPP document, developed pursuant to requirements of Section 303(e) of the CWA, provides the basis and guidance for all water quality planning activities at the DEQ. Water quality planning staff are responsible for several water quality planning program elements:

(A) Developing procedures for planning and implementing water quality management programs in the CPP.

(B) Preparing recommendations for the listing and delisting of waterbodies in the 303(d) List.

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(C) Establishing TMDLs for 303(d)-listed waterbodies and coordinating TMDLs with other state environmental agencies.

(4) Technical information and procedures for implementation. Technical information and procedures used in water quality planning activities are included in the CPP. Because it is such a significant element in water quality planning, the TMDL development process is described in detail. Proposed adoption of a TMDL is considered a major change to the state's Water Quality Management Plan. Public participation in TMDL development and adoption shall be conducted in accordance with state requirements and the procedures outlined in the CPP. The TMDL loading allocation process culminates in the allocation of pollutant loads among various point sources, nonpoint sources, natural background sources and a margin of safety (MOS), according to the following equation:

$$\text{TMDL} = \text{WLA} + \text{LA} + \text{MOS}$$

TMDL is loading capacity, the maximum amount of pollutant loading a water body can receive without violating water quality standards. WLA is wasteload allocation, the portion of a receiving water's loading capacity that is allocated to existing and future point sources. LA is load allocation, the portion of a receiving water's loading capacity that is allocated to existing and future nonpoint sources and to natural background sources. MOS is margin of safety, the prescribed mechanism to account for the uncertainty in determining the amount of pollutant load and its effect on water quality. MOS is typically considered implicitly with conservative assumptions within calculations or models, explicitly during allocation of loads, or both. The major components of TMDL development are assessment of existing conditions, determination of maximum allowable loading, and allocation of loadings.

(A) Assessment of Existing Conditions

(i) Water Quality

The first step in assessing the current conditions is to gather available data and information on the water body. At a minimum, the water quality data (if available) that was used for listing the water body (re: 303(d) List) should be reviewed. The sufficiency and adequacy of existing data is evaluated and described. The DEQ will consider data to be sufficient and adequate when the data accurately characterizes the conditions of the water body, watershed, pollutant, and pollutant sources throughout typical geographic and temporal conditions with reasonable certainty. Some TMDL projects will require additional watershed information relating to particular water quality conditions, as existing data alone may be insufficient to support the analytical needs of TMDL projects. Data on low-flow conditions, storm-flow conditions, and seasonal variations are gathered when appropriate to the situation. Data will be evaluated considering USAP, water quality standards, and EPA guidance.

(ii) Pollutant Load

Before pollutant loads are allocated among sources, the location and types of sources, and the current and projected pollutant load for each source are identified. Current loading and source contributions are established by measuring pollutant loads directly, calculating or estimating loads from water quality and flow data, estimating loads with mathematical models, or using a combination of these methods. Examples of data utilized for pollutant source analysis include:

- watershed and sub watershed boundaries
- hydrologic interaction between surface water and groundwater
- locations of stream segments
- locations of pollutant sources
- types of pollutant sources
- anticipated growth of discharges
- meteorological/rainfall data and runoff coefficients
- land uses and land cover
- soil types.

An inventory is developed of all known factors in the watershed which influence water quality. These factors might include permitted industrial and municipal wastewater discharges, concentrated animal feeding operations (CAFOs), waste application sites, cropland, forestry operations, industrial storm water runoff, urban runoff, construction activities, and other sources such as natural background. This information will be collected and maintained by sub-watershed where possible to enhance the identification of cause-and-effect relationships. The watershed inventory is compiled from land use data, special investigations, DEQ complaint investigations, DEQ permit databases, surface water monitoring data, input from other agencies, and watershed stakeholder input through an outreach process.

(B) Maximum Allowable Loading

A water body's loading capacity is an estimate of the maximum amount of pollutant loading the water body, considering critical conditions (i.e. flow, temperature, etc.), can receive over time without exceeding water quality standards. Hydrological, biological, chemical, and pollutant fate and transport data are required to calculate a water body's loading capacity. The maximum loading capacities of a waterbody are determined in most cases using a water quality model or models adapted specifically for the waterbody in question. The model used is selected on a case by case basis and is based on available resources, the identified pollutant source(s) and the availability of water quality data.

(C) Allocation of Loadings

Future growth, spatial and temporal variations in flows and loadings, antibacksliding, antidegradation and pollutant sources and source categories must be considered and incorporated when developing a loading, unless it is demonstrated that one or more of these factors is not relevant to the particular load allocation.

(D) Pollution Allocation Strategies

There are three common methods for allocating loads; equal percent removal, equal effluent concentrations, and a hybrid method. Other methods are considered if necessary.

(i) Equal Percent Removal

Equal percent removal exists in two forms. In one, the overall removal efficiencies of the sources are set so that they are all equal. In the other, the incremental removal efficiencies beyond the current discharge are equal.

(ii) Equal Effluent Concentration

This method is self-evident. It is similar to equal percent removal if influent concentrations at all sources are approximately the same.

(iii) Hybrid Method

With this method, the criteria for waste reduction may not be the same from one source to the next. One source may be allowed to operate unchanged while another may be

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required to provide the entire load reduction. More generally, however, a proportionality rule may be assigned that requires the percent removal to be proportional to the input source loading or flow rate.

(iv) Other Methods

Any other method contained in EPA guidance. The DEQ shall approve the use of the method on a case-by-case basis.

(E) Pollutant Trading

Where appropriate and technically feasible, tradeoffs among wasteload allocations are considered. Technological feasibility, economic issues, and regulatory authority are evaluated when trading allocations. Pollutant trades are acceptable so long as water quality standards (including antidegradation regulations and policies) and minimum applicable technology-based controls are met.

(F) Margin of Safety

The margin of safety (MOS) is the prescribed mechanism to account for the uncertainty associated with TMDL projects. Guidelines for appropriate margins of safety are included in the CPP. The MOS can be included in more than one of the TMDL analytical steps. To represent the MOS, conservative assumptions should be used in completing one or more of the following steps:

- (i) derivation of numeric water quality targets
- (ii) determination of pollutant sources
- (iii) representation of pollutant fate and transport relationships
- (iv) determination of the degree of pollutant reduction achievable through management measures and control actions

(5) **Integration of WQSIP into water quality management activities.** DEQ administrative rules and WQD policies are currently in place which integrate the requirements of the WQSIP into water quality planning. Should WQSIP revisions be necessary in future years, rule changes and policy changes will be made to address and incorporate such requirements.

(6) **Compliance with mandated statewide water quality requirements.** TMDL activities comply with the procedures established in the CPP. Coordination of TMDL activities among state agencies is the primary responsibility of the TMDL Work Group, which is chaired by the DEQ and includes the state environmental agencies with water quality responsibilities.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The 303(d) listing/delisting process, which in turn utilizes USAP, will be used to evaluate the effectiveness of all DEQ programs related to surface water quality.

(C) POINT SOURCE DISCHARGES - OPDES PERMITTING

The primary mechanism for controlling pollution from point source discharges to waters of the state is through the OPDES permitting, compliance monitoring and enforcement processes. OPDES permits include such effluent limitations as are necessary to protect water quality and existing and designated beneficial uses of the receiving water(s). OPDES permit enforcement activities are described in Part II(r) of the Plan.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.**

(A) **General.** The OWQS provides a tiered antidegradation policy designating levels of protection. An OPDES permit and the pollutant limitations therein must, at a minimum,

serve to protect the existing and designated beneficial uses of the receiving surface water, thereby affording it protection from degradation at the most basic level (Tier 1). In those cases where existing or proposed discharges are to a designated HQW, SWS, or to waters of ecological and/or recreational significance or endangered/threatened species habitat (OAC 252:740, Appendix B waters), a higher degree of protection from degradation (Tier 2) must be afforded the waterbody. In no case will any discharge be permitted which would, if it occurred, lower existing water quality in an SWS or HQW, regardless of the date of its original existence. A designated Scenic River and/or Outstanding Resource Water (ORW) and their watersheds must be afforded the highest degree of protection (Tier 3), which may even involve denial of a permit to discharge or denial of an increased pollutant loading in the discharge, depending on whether the discharge existed on or prior to June 11, 1989 (non-storm water), or June 25, 1992 (storm water)

(B) **Fact Sheet/Statement of Basis.** An OPDES permit's Fact Sheet/Statement of Basis must address how permit limitations are developed, which in turn assures compliance with the OWQS and WQS implementation criteria for protecting existing and designated beneficial uses. To ensure that compliance with antidegradation requirements is addressed in an individual OPDES permit, the permit's Fact Sheet or Statement of Basis shall specifically describe the antidegradation level applicable to the receiving water and any permitting considerations necessary to afford that level of protection. In cases where permit issuance is denied based on Tier 2 or Tier 3 antidegradation criteria, the statement of basis for the permit denial shall so state. Authorizations issued under a General Permit do not require separate fact sheets. As General Permits expire and are reissued, the associated fact sheets will incorporate a discussion of antidegradation requirements and protection of beneficial uses.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area, but such determinations of beneficial use support or impairment may directly affect the OPDES permitting process in terms of the level of pollutant control technology that may need to be employed for discharges to an impaired waterbody and compliance with the anti-backsliding provisions in Section 402(o) of the CWA. This becomes particularly important when a facility's effluent contains the pollutant(s) causing or contributing to the impairment of a waterbody. For this reason, OPDES permitting procedures will include a review of the 303(d) list and available USAP data applicable to the receiving water.

(3) **Description of programs affecting water quality.**

(A) **Direct discharges.** Municipal POTWs and industrial facilities under DEQ jurisdiction which discharge process wastewaters directly to waters of the state are required to obtain OPDES permits from the Department. Included are discharge authorizations under a General Permit for those facility classes for which general permits have been developed, discharges from water treatment plant wastewaters (OAC 252:631, Subchapter 1), and discharges generated by groundwater remediation activities (OAC 252:611, Subchapter 5). These OPDES permits limit the concentration and loading of specified pollutants in such discharges and require periodic self-monitoring and reporting of levels of the limited pollutants in the facility's discharge(s). Numeric limitations result from the application of the more stringent of technology or water quality-based criteria. OPDES permits may include narrative limitations, effluent or receiving water background

monitoring, schedules of compliance and such other special conditions as may be necessary to prevent, control or abate pollution.

(B) **Indirect discharges.** OPDES permits may also take the form of individual IU permits for industrial facilities which discharge to a non-pretreatment program POTW.

(4) **Technical information and procedures for implementation.**

(A) **Permitting procedures.** OPDES permit limitations are developed using the more stringent of technology-based limitations (secondary treatment standards for municipal POTWs and industrial category-specific ELGs for industries) or water quality-based limitations derived utilizing the OWQS and WQS implementation criteria in OAC 252:740 and OAC 252:690, Subchapter 3. Where technology-based limitations for conventional pollutants are not sufficient to maintain OWQS-prescribed criteria a WLA is developed, approved by EPA Region 6, and publicly noticed. Where technology-based limitations for conventional pollutants are not sufficient to maintain OWQS-prescribed DO criteria for fish and wildlife propagation, a DO-based WLA for oxygen demanding substances (ammonia plus either BOD₅ or CBOD₅) and DO is generated, approved by EPA Region 6, and publicly noticed. DO-based monthly average ammonia limits, as well as technology-based ammonia limits for certain categories of industries, are compared against the toxicity-based monthly average ammonia limit derived from the 6 mg/l chronic screening value for ammonia at the edge of the chronic mixing zone. Where the toxicity-based ammonia limit is more stringent than either a DO-based limit or a technology-based limit, the toxicity-based limit is established in the permit. Where a DO-based ammonia limit applies for a portion of the year, but not the entire year, a toxicity-based limit applies during the season for which the DO-based WLA is silent. For pollutants with numerical criteria in the OWQS, water quality-based permit limitations are required where a measurable pollutant in an effluent exhibits reasonable potential. WLAs and criterion LTAs are calculated, and permit limits are developed from the criterion LTAs. The most stringent monthly average limit and its associated daily maximum limit are established in the permit. Where reasonable potential is exhibited to exceed an NRWQC human health/fish consumption criterion in the absence of a promulgated state criterion, effluent monitoring, rather than a limitation, is required and OWRB is notified so that they may consider the need for a water quality criterion. Permit limits are developed in accordance with OAC 252:690, Subchapter 3. Where an industrial technology-based limitation applies to a pollutant and reasonable potential is not exhibited for the effluent to exceed an applicable water quality criterion for that pollutant, the technology-based limitation is itself screened to determine whether it would, if the pollutant were present in the effluent at a concentration equal to the technology standard's monthly average limit, exhibit reasonable potential. If so, a water quality-based permit limitation is required for that pollutant.

(B) **OWQS criteria screening.** Because of the complexity of the mathematical and statistical computations necessary to screen for reasonable potential, calculate WLAs and limiting criterion LTAs, and develop permit limits, the WQD has developed two spreadsheets for this purpose, one for discharges to streams and the other for discharges to lakes. Together they are referred to by the DEQ as OWQScreen. The Permitting Section will utilize, maintain and update OWQScreen, as necessary, to remain current with the OWQS and WQS implementation criteria in OAC 252:740 and OAC 252:690, Subchapter 3. Site specific OWQScreen spreadsheets will be developed on an as-needed basis for receiving waters for which site-specific metals criteria are developed and adopted into the

OWQS in accordance with OAC 252:730, Appendix E. Should TBLLs be required in DEQ-issued IU permits or in municipally-issued IU permits, OWQScreen also provides the capability to calculate the entire array of (theoretical) water quality-based permit limits for pollutants with numerical criteria in the OWQS (i.e., limits that would be established in a given OPDES permit were reasonable potential demonstrated to exceed an applicable water criterion).

(C) **Effluent and background monitoring.** Ten data points are required to properly characterize the standard deviation of an effluent or background data distribution. Often there are no background data available and only a single effluent data point. Where the use of such limited effluent and background data does not result in reasonable potential for a pollutant, a permit writer must determine whether additional effluent or background monitoring is warranted as a permit condition. Procedures are established at OAC 252:690, Subchapter 3, to objectively and uniformly evaluate where additional monitoring is warranted where less than 10 data points are available.

(5) **Integration of WQSIP into water quality management activities.** Because of the SB 549-mandated reallocation of a major portion of the WQS implementation criteria to the various state environmental agencies, the DEQ has promulgated WQS implementation criteria for point source discharges and groundwater protection in OAC 252:690, based on the OWQS and the foundational statewide implementation criteria in OAC 252:740.

(6) **Compliance with mandated statewide water quality requirements.** Procedures for the development of individual and general OPDES permits issued to municipal POTWs and industrial facilities utilize and are in compliance with all applicable statewide surface water quality requirements. Compliance with statewide groundwater quality requirements in OPDES permits is described in Part II(q). OPDES permits require that environmental laboratories utilized in fulfilling analytical monitoring requirements be certified by the SEL (see Part II(n)). In the permitting of surface coal mine discharges, the WQD must interface with the ODM, since surface coal mine discharge permit limitations and monitoring requirements are tied to the status of the mine (active, Phase I SMCRA bond release awaiting Phase II release, of post-Phase II release). The WQD must also interface with Corp Comm in the permitting of LUST groundwater remediation-related discharges. The WQD must receive notification from Corp Comm when a LUST remediation project is terminated so that the OPDES permit may be terminated.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** For surface waters, BUMP data and beneficial use support/impairment studies utilizing USAP are capable of providing long term evaluations in selected areas of whether OPDES permitting activities (as well as OWQS water quality criteria, WQS implementation criteria and permitting procedures upon which the water quality-based portion of the program is based) adequately protect assigned beneficial uses and maintain or improve water quality on site-specific, segment and basin-wide levels. Where existing and designated beneficial uses are not being met according to Tier 1 antidegradation requirements or where water quality degradation is experienced counter to Tier 2 or Tier 3 antidegradation requirements, the program's point source permitting procedures, as well as the OWQS and WQS implementation criteria, may need reexamination. Background pollutant levels, where used in the OPDES permitting process, may be compared against BUMP and USAP data where permit limitations appear not to protect and maintain beneficial uses as

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intended. The use of unrepresentative background information may over- or under-estimate the assimilation capacity of a receiving water. Likewise, BUMP and USAP procedures may need to be reexamined.

(9) **Nutrient limited watershed.** A permittee shall monitor monthly for total nitrogen and/or total phosphorus if the discharge is to a nutrient limited watershed as designated in OAC 252:730.

(d) **POINT SOURCE DISCHARGES – PRETREATMENT**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** Incorporation of the general pretreatment regulations at 40 CFR Part 403 into OPDES permits for POTWs with approved pretreatment programs or POTWs developing such pretreatment programs provides an additional means of compliance with antidegradation requirements and protection of beneficial uses.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** IU permits for industrial discharges to POTWs in approved pretreatment program municipalities are issued by the designated municipal control authority. General oversight is provided by the DEQ's State Pretreatment Coordinator, who acts as the pretreatment program approval authority. The Pretreatment Coordinator reviews pretreatment program submittals, revisions to previously approved pretreatment programs, and pretreatment program annual reports for compliance with the National Pretreatment Regulations found at 40 CFR Part 403. The DEQ issues IU permits for industrial discharges to non-pretreatment program POTWs. Inspection and enforcement oversight for both approved pretreatment programs and IU permits for industries discharging to non-pretreatment program POTWs is provided by the WQD Industrial Enforcement Section.

(4) **Technical information and procedures for implementation.** OWQScreen spreadsheets provide the capability to calculate potential effluent limits for TBLs. The State Pretreatment Coordinator will disseminate this information to municipalities with approved pretreatment programs for their use.

(5) **Integration of WQSIP into water quality management activities.** Integration of the WQSIP into water quality management activities is accomplished through the OPDES permitting process.

(6) **Compliance with mandated statewide water quality requirements.** Pretreatment program procedures utilize and are in compliance with all applicable statewide surface water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of pretreatment program water quality management activities is directly monitored on a statewide basis by Pretreatment Compliance Inspections and Pretreatment Audits of POTW pretreatment programs, as well as through a POTW's compliance with its permit limitations, as tracked by PCS or ICIS.

(e) **POINT SOURCE DISCHARGES – WHOLE EFFLUENT TOXICITY (WET)**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** Compliance with antidegradation requirements and protection of beneficial uses is provided

through incorporation of WET testing procedures and, if necessary, WET limits into OPDES permits. A narrative toxicity criterion implementation strategy for ammonia was developed cooperatively between the DEQ, OWRB and EPA Region 6 permitting staff in November 2000 and was revised in January 2001.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** Toxics staff reviews OPDES permit WET testing requirements during the permit drafting process. In addition to reviewing draft permits, the Toxics staff reviews WET testing summary reports submitted by the regulated community in accordance with the conditions of their OPDES permits to ensure that the information input to PCS or ICIS via DMRs accurately reflects actual test results and the completion of valid testing. Where persistent lethality has been demonstrated through repeated WET testing, the permittees are required to conduct a TRE. TREs or TIEs may be required for intermittent lethality or persistent sublethality. Permits may also contain provisions for management practices to control toxicity. The Toxics staff reviews TRE/TIE progress, provides general oversight to the TRE/TIE process, and coordinates DEQ involvement regarding corrective actions and related WET or pollutant-specific limitations to be incorporated into affected OPDES permits.

(4) **Technical information and procedures for implementation.** OWQScreen provides the capability to determine the appropriate type of WET test, critical dilution and dilution series for an OPDES permit. Toxics staff, through critical review of submitted WET test reports, will assist permitting staff in determining whether WET limits are necessary and whether performance-based monitoring frequency reductions are warranted.

(5) **Integration of WQSIP into water quality management activities.** Integration of the WQSIP into water quality management activities is accomplished through the OPDES permitting process.

(6) **Compliance with mandated statewide water quality requirements.** The Toxics staff reviews OPDES permit WET testing requirements during the permit drafting process to ensure that appropriate WET testing is prescribed in the permit and is in accordance with the requirements of OAC 252:730 and OAC 252:690, Subchapter 3.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of biomonitoring permitting procedures, the review of WET testing results and the oversight of TRE/TIE activities is evaluated to a considerable extent through the affected facilities achieving compliance with the OWQS narrative toxicity criterion. BUMP and fish community biotrend information may also provide valuable feedback on the effectiveness of biomonitoring activities.

(f) **POINT SOURCE DISCHARGES – STORM WATER MANAGEMENT**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.**

(A) **General.** In a manner similar to that for individual OPDES permits, requirements for sector-specific industrial facilities, regulated construction sites, and MS4s must protect the existing and designated beneficial uses of the receiving surface water at the Tier 1 level. Tier 2 and Tier 3 levels of protection apply to storm water discharges as well. Where Tier 3 level protection is necessary (except for storm water discharges from temporary

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construction activities), only storm water discharges existing as of June 25, 1992, may be permitted. In no case will any discharge be permitted which would, if it occurred, lower existing water quality in an SWS or HQW, regardless of the date of its original existence.

(B) **Storm water construction permit.** The DEQ's Storm Water Construction Permit was issued on September 13, 2007, pursuant to 27A O.S. § 2-14-101 *et seq.*, and in accordance with OAC 252:004. The permitting process utilizes a watershed-specific sensitive area identification system for endangered species rather than the more general county-indexed identification system developed by EPA. Applications for a construction storm water permit for a development site within a sensitive area are scrutinized in greater depth by the USFWS. Stricter erosion control methods and best management practices may be required where Tier 3 level protection is required.

(C) **Industrial stormwater multi-sector general permit.** The DEQ Multi-Sector General Permit for storm water discharges associated with industrial activities was issued on April 7, 2006. Where no additional storm water-related pollutant loading is permitted in a Scenic River watershed, an applicant for an MSGP may either utilize an existing discharge or provide the capability to capture and totally retain all storm water that enters or is incident upon such property.

(D) **Small MS4 general permit.** The DEQ Final Small MS4 General Permit for small municipal separate storm sewer system discharges was issued on February 8, 2005.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** Regulated construction sites must obtain a Storm Water Construction Permit authorization. Sector-specific industrial facilities under DEQ jurisdiction which discharge storm water directly to waters of the state are required to obtain an OPDES Industrial MSGP authorization. The Department used the NPDES (EPA) Multi-Sector Industrial Permit (issued on September 29, 1995 by EPA) until October 2, 2000, when the OPDES (State) MSGP was issued. Storm water permits may also take the form of individual industrial OPDES permits for facilities discharging to waters of the state directly or via discharge to the storm water collection system of an MS4 municipality.

(4) **Technical information and procedures for implementation.** Application, authorization and termination procedures, and coverage limitations are specified in the permits. Information provided by the USFWS is utilized in determining where more restrictive conditions are required in storm water general permits to protect sensitive habitat areas identified by the USFWS. Inspections are conducted when termination of coverage under a storm water permit is requested in order to verify that the site is stabilized and/or storm water discharges have ceased.

(5) **Integration of WQSIP into water quality management activities.** The State MSGP requires an annual Site Compliance Evaluation Report to be completed by facility owners, managers or operators. The report will describe reportable spills and storm water-related events which may have affected surface water or groundwater quality. Changes or amendments to SWP3s or BMP documents will also be documented through this report. This new reporting method replacing the use of reporting storm water monitoring activities by DMR will require facility owners, managers and/or operators to become directly involved with permit compliance.

(6) **Compliance with mandated statewide water quality requirements.** Storm water permitting activities utilize and are in compliance with all applicable statewide surface water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The State MSGP requires facility owners, managers and/or operators to become directly involved with permit compliance and will ensure a more effective storm water management program. Storm water discharges from certain industrial sectors are subject to numeric effluent limits and monitoring requirements. DMRs submitted by these facilities are evaluated for compliance with effluent limits. Municipalities with an MS4 permit must submit an annual report describing stormwater control activities and improvements.

(g) **NONPOINT SOURCE POLLUTION**

The WQD is the focal point for assessment and consideration of loads from nonpoint sources. The effect of nonpoint source pollution is an integral part of TMDLs and basin-wide planning.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** To the extent possible through site investigations and cooperation with other state agencies, the TMDL process takes into account nonpoint sources of pollution in establishing point source wasteload allocations and nonpoint source load allocations which will comply with antidegradation requirements and protect existing and designated beneficial uses.

(2) **Application of USAP.** Although evaluation of beneficial use support is not a water quality planning staff responsibility, its surface water quality-related programs, particularly the TMDL program, will be utilized on a continuing basis to identify water bodies where USAP might be utilized to reevaluate a waterbody's beneficial uses as affected by nonpoint sources. USAP, water quality standards, and EPA guidance will be considered to set appropriate target end points in the development of TMDLs.

(3) **Description of programs affecting water quality.** Water quality planning staff are responsible for two water quality planning program elements, both of which involve the need to account for nonpoint sources of pollution:

(A) Procedures for planning and implementing water quality management programs in the CPP.

(B) Preparing recommendations for the listing and delisting of waterbodies in the 303(d) List, and development of TMDLs.

(4) **Technical information and procedures for implementation.** Technical information and procedures used in water quality planning activities, including accounting for nonpoint sources of pollution, are included in the CPP.

(5) **Integration of WQSIP into water quality management activities.** Federal and state rules and WQD policies are in place that integrate the requirements of the WQSIP into water quality planning. Should WQSIP revisions be necessary in future years, rule changes and/or policy changes will be made to address and incorporate such new requirements.

(6) **Compliance with mandated statewide water quality requirements.** TMDL activities require consideration of nonpoint sources of pollution and must comply with the procedures established in the CPP which involve consideration thereof. Coordination of TMDL activities among state agencies is the primary responsibility of the TMDL Work Group, which is chaired by the DEQ and includes the state environmental agencies with water quality responsibilities.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The 303(d) listing/delisting process, which in turn utilizes USAP, will be used to evaluate the effectiveness of DEQ programs related to nonpoint source aspects of surface water quality.

(h) **SECTION 106 POLLUTION CONTROL PROGRAM**

This program area is not directly applicable to WQS implementation.

(i) **WATER QUALITY PROTECTION AND CERTIFICATION**

Surface water and groundwater quality protection are described under the various program areas in the Plan. Water quality certification under Section 401 of the CWA is a specific responsibility of the WQD.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** Section 401 water quality certifications are the vehicle that a state uses to ensure that Federal permits comply with State antidegradation requirements and existing and designated beneficial uses are not compromised. These water quality certifications are DEQ documents that impose conditions in federal permits or licenses that are specifically intended to ensure attainment of the specific antidegradation requirements and protection of beneficial uses assigned in the OWQS.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of the Section 401 certification process, although beneficial use support/non-support determinations and resulting listing/delisting of waterbodies on the 303(d) List may affect Section 401 certifications.

(3) **Description of programs affecting water quality.** Applicants for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, dredge or fill, or other activities which may result in any discharge into, or pollution or alteration of, waters of the state must obtain a Section 401 water quality certification from the DEQ. Applications for Section 401 certifications are submitted to the DEQ in accordance with OAC 252:611, including mitigation plans when required by the federal permitting entity.

(4) **Technical information and procedures for implementation.** Technical information and procedures used to implement water quality protection are located at OAC 252:611. The DEQ maintains a database of all water quality certifications issued to projects on waters of the state.

(5) **Integration of WQSIP into water quality management activities.** Existing Section 401 certification procedures are consistent with the purpose and content of this Plan.

(6) **Compliance with mandated statewide water quality requirements.** Compliance with statewide water quality requirements is an inherent part of the Section 401 certification process. Water quality certification uses permit review, permit conditions, and the expertise of other state agencies to accomplish the task of ensuring compliance with statewide water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of Section 401 water quality certification can be observed in the attainment and maintenance of existing and designated beneficial uses by the affected facilities or operations.

(j) **OPERATOR CERTIFICATION**

This program area is not directly applicable to WQS implementation.

(k) **LAND PROTECTION**

Several jurisdictional areas (UIC, hazardous waste, solid waste, Superfund, Brownfields and radiation management) are subsumed under Land Protection.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** All permits and approvals issued by the LPD include technical provisions to protect groundwater and/or surface water. Should releases occur, the owner/operator of a regulated facility will be required to take appropriate measures to protect fresh water sources, and conduct remedial actions as necessary.

(A) **UIC.** UIC permits provide a technically sound basis to ensure that injected fluids do not migrate from the permitted zones of injection and compromise the protection of underground sources of drinking water. Financial assurance is required for closure (plugging and abandonment) and post-closure care (groundwater monitoring) is required as applicable.

(B) **Hazardous waste/solid waste.** For all land-based hazardous waste disposal facilities, existing rules require that the owner/operator monitor for releases to groundwater. Surface water is generally only monitored if a release is suspected. Monitoring wells are the usual method of release detection. Plans for closure and post-closure and any appropriate monitoring or remedial actions are required in the permit. Financial assurance is required for closure and post-closure care (maintenance and monitoring). The Solid Waste program issues permits for technically complete applications that ensure protection of groundwater and prevention of surface water contamination from runoff. Financial assurance for post-closure care and monitoring of groundwater are included in Municipal Solid Waste Management permits.

(C) **Superfund/Brownfields.** LPD is charged with Superfund responsibilities of the state under CERCLA except for SARA Title III planning requirements. The Brownfields Redevelopment/Voluntary Cleanup program is included in this jurisdictional area.

(D) **Radiation management.** Radiation protection permitting and licensing requirements ensure that antidegradation requirements are met and protection of beneficial uses of both surface waters and groundwaters are maintained.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area. However, in voluntary cleanups, use support assessments obtained through the USAP process will be considered in final remedy decision-making during the risk assessment and exposure scenario development.

(3) **Description of programs affecting water quality.**

(A) **UIC.** UIC permits are issued to private and commercial facilities wishing to inject fluids underground for disposal or mineral extraction purposes under OAC 252:652 and 40 CFR Parts 144 through 146 and 148.

(B) **Hazardous waste/solid waste.** Hazardous and solid waste permits are issued to treatment, storage and disposal facilities (TSDs) and municipal and commercial solid waste facilities. The hazardous waste program issues permits for TSDs pursuant to OAC 252:205 and 40 CFR Parts 260 through 270. Solid waste permits are issued under OAC 252:515. Facilities wishing to close solid or hazardous waste management facilities must comply

with all the post-closure care and groundwater monitoring requirements of the above-cited regulations.

(C) **Superfund/Brownfields.** This program identifies, investigates, designs, and conducts remediation of uncontrolled hazardous waste sites and conducts groundwater remediation where feasible. The Superfund program acts in a support role to EPA and other state emergency response entities in emergency response actions. This program has a positive effect on water quality by identifying and remediating waste sources that have significant potential to affect water quality, and by containing, monitoring or remediating affected groundwater and surface water. Brownfields authority is found at 27A O.S. §2-15-101 *et seq.*, and Superfund authority is found at 40 CFR Part 300.

(D) **Radiation management.** Licensing activities for the use and management of byproduct material, special nuclear material, and sources of radiation, except for activities pertaining to diagnostic x-ray systems, are controlled by the LPD's Radiation Management Section since completion of delegation of these authorities from the NRC.

(4) **Technical information and procedures for implementation.**

(A) **UIC.** UIC permits specify the conditions under which a UIC well will be permitted. Considerations include zone(s) of injection, rates, pressures, temperatures and annulus monitoring requirements. Monitoring locations, frequencies, parameters and reporting are specified. A detailed closure plan including financial assurance is also required in the permit.

B) **Hazardous waste/solid waste.** Hazardous waste and solid waste permits specify conditions for facility construction and operation, groundwater monitoring, and reporting specific parameters that indicate releases to groundwater. The location and frequency of monitoring wells are designed to detect releases should they occur. Action levels are specified in the permit. Risk-based remediation would consider protection of aquifers in the decision-making process. Surface water monitoring occurs when potential releases to surface water exist, or when impacted groundwater interfaces with surface water. Closure, post-closure and corrective action plans, as well as financial assurance, are required by the permits.

(C) **Superfund/Brownfields.** Superfund/Brownfields include determinations of ARARs for remedial decision-making or risk-based closure for protection of surface water and groundwater. Groundwater uses will be considered to determine cleanup and remediation decisions. Emergency response actions will also include protection of public water supplies, surface water and groundwater. The remediation of sites in the Superfund/Brownfields program sometimes requires the treatment and discharge of wastewater and/or stormwater. The program coordinates with WQD to identify the appropriate discharge and permitting requirements. These requirements would be evaluated as ARARs in any cleanup decisions. Many sites in these programs have historic groundwater and surface water contamination. Cleanup decisions are risk-based and generally include MCLs or other criteria to protect groundwater or surface water. Antidegradation and beneficial uses are considered for cleanup. Cleanup for some sites may include containment of contaminants to prevent further degradation of groundwater or surface water. A systematic monitoring program may verify natural attenuation of contamination in groundwater.

(5) **Integration of WQSIP into water quality management activities.** The Department currently has rules (both federal and state) and agency policies in place that

fully implement applicable portions of the OWQS. Departmental rule or policy changes will be made as necessary to implement new or modified aspects of the OWQS.

(6) **Compliance with mandated statewide water quality requirements.** Siting of new facilities and regulated units must be permitted in such a manner that sensitive surface water and groundwater supplies are protected. In addition, operators of permitted facilities are required to perform appropriate monitoring so that releases can be detected and contained in a timely manner and corrective action, if necessary, can be implemented to remediate an impacted water body.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of LPD activities to protect water quality is evaluated by the routine monitoring of permitted facilities for both groundwater and surface water impacts. On-site inspections of permitted facilities and site visits to voluntary cleanup efforts ensure compliance with applicable rules and regulations. In addition, the environmental indicators reporting requirements provide a suitable evaluation methodology for the permitted and voluntary remediation sites within the jurisdiction of the LPD.

(I) **WATER AND WASTEWATER TREATMENT SYSTEMS (NON-INDUSTRIAL)**

This program area includes the construction permitting of municipal and other publicly-owned water and wastewater treatment systems, including the land application of wastewater and non-industrial sludge (biosolids) therefrom, as well as the approval of private individual and small on-site sewage treatment and disposal systems.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.**

There is an inherent presumption that adherence to minimum design and construction standards will achieve the objectives of water quality maintenance and support of existing and designated beneficial uses of surface waters and groundwaters. On occasion, water quality-based considerations associated with the attainment and maintenance of higher quality waters, especially relating to dissolved oxygen depletion in receiving waters, may be established through TMDLs requiring a level of sewage treatment more stringent than "secondary." In such cases, construction permitting procedures will ensure that construction permits issued for such systems provide the required level of treatment. Applications for construction permits are reviewed to ensure that new facilities or modifications to existing facilities are not inconsistent with treatment requirements and size restrictions contained in the Water Quality Management Plan.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** Minimum water and wastewater system construction standards and biosolids/water plant residuals reuse and disposal standards are found at OACs 252:606, 252:621, 252:626, 252:631, 252:641 and 252:656. These minimum standards have been demonstrated to achieve water treatment and distribution objectives and sewage collection, treatment and disposal objectives on a widespread geographical basis, including the State of Oklahoma. Construction permit applications and sludge management plan applications are required to contain engineering reports, plans, specifications and sludge management or residuals disposal plans sufficient to demonstrate

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compliance with these minimum standards for construction or advanced levels of sewage treatment. Local DEQ offices approve the design of private individual and small on-site sewage disposal systems in accordance with OAC 252:641. These systems are inspected and installations are approved by the ECLS Division through its local offices.

(4) **Technical information and procedures for implementation.** Minimum water and wastewater system construction standards and biosolids/water plant residuals reuse and disposal standards are found at OACs 252:606, 252:621, 252:626, 252:631, 252:641 and 252:656.

(5) **Integration of WQSIP into water quality management activities.** The Department will from time to time revise or amend rules concerning construction standards or operational requirements to better protect the quality of waters of the state. Internal policies and guidelines will also be used to integrate the Plan into water and wastewater treatment system permitting activities.

(6) **Compliance with mandated statewide water quality requirements.** Applicable rules for construction permitting and biosolids/residuals beneficial reuse provide for consideration of and compliance with statewide water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The Department will review groundwater and surface water quality information obtained through monitoring activities conducted by DEQ, OWRB, OCC, USGS, and others as well as site specific information to determine whether groundwater and surface water quality is being impacted.

(m) **EMERGENCY RESPONSE**

This program area is not directly applicable to WQS implementation.

(n) **ENVIRONMENTAL LABORATORY SERVICES**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** The SEL provides analytical support for DEQ and other state agency programs that seek to define compliance with antidegradation requirements and protection of beneficial uses. The Fish Community Biotrends monitoring program and the Toxics and Reservoirs program may be used to evaluate long-term trends, both positive and negative, in fish population and toxic contaminant concentrations in fish flesh.

(2) **Application of USAP.** The SEL may play a supporting role for other state agency functions which are charged with USAP-related activities. One of the SEL's most significant contributions to USAP efforts is its Fish Community Biotrends monitoring program.

(3) **Description of programs affecting water quality.** The SEL provides essential support for Section 106 pollution control activities, and data produced by the SEL is used extensively in programs funded under Section 106 for areas within DEQ's jurisdiction. It provides support and review of QA Project Plans for all program areas. Laboratories which report results for compliance with NPDES/OPDES permit requirements are required to hold certification from the SEL's laboratory certification unit. The Fish Community Biotrends monitoring program and the Toxics and Reservoirs program may be used to evaluate effects of both point source and nonpoint source discharges on fish populations and the human health aspects of eating fish flesh. The SEL provides support in developing sampling designs, sample analysis, and data analysis for DEQ monitoring activities as well as for private citizens and other state agencies.

The SEL provides analytical support, when needed, for special purpose point source compliance monitoring and evaluation, nonpoint source pollution studies, as well as for the TMDL process. The SEL provides analytical support to the WQD for compliance determination, investigations, remediation-related monitoring and other monitoring related to actual or suspected groundwater pollution by water and wastewater treatment facilities, as well as the land application of both municipal and industrial wastewaters and sludges. The SEL provides analytical support to the LPD for compliance determination, investigations, remediation-related monitoring and other monitoring related to identification of hazardous substances, hazardous waste and solid waste disposal sites, Superfund and Brownfield sites and residuals from past practices of radioactive waste disposal. The SEL provides analytical support to both the LPD and Corp Comm in the regulation of UIC wells. The SEL also provides analytical support to the DEQ and other state environmental agencies for emergency response situations.

(4) **Technical information and procedures for implementation.** The SEL assesses the health of aquatic communities via the formal protocol established in its Fish Community Biotrends monitoring program. It conducts its Toxics and Reservoirs program according to an established sampling and analytical protocol. The SEL is also working towards becoming accredited by NELAC.

(5) **Integration of WQSIP into water quality management activities.** The Laboratory Certification Program and the SEL's move towards NELAC certification will ensure that data of known quality and comparability is available for environmental programs.

(6) **Compliance with mandated statewide water quality requirements.** The Toxics and Reservoirs program is administered as a direct implementation of and is in compliance with the toxics in fish tissue criteria found at OAC 252:730. The SEL also provides a Section 106 supporting role for other DEQ functions which have direct responsibilities for implementing the OWQS and WQS implementation criteria.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of SEL-rendered services to other Section 106-funded activities is measured largely through the effectiveness of those individual programs. The effectiveness of the Toxics and Reservoirs program, in terms of both initiating and terminating fish tissue consumption alerts, is measured largely by its ability to be communicated to affected consumers and the public at large. Evaluation of the effectiveness of interdivisional and interagency cooperation in investigating possible nonpoint sources and evaluating point source dischargers to determine if they cause or contribute to the alert levels of toxics in fish tissue is provided in part by BUMP data and in part by the effectiveness of the individual programs involved. The effectiveness of the Fish Community Biotrends Monitoring Program is likewise measured in terms of BUMP data as well as the effectiveness of the individual programs involved in investigating causes of changes in aquatic communities.

(o) **HAZARDOUS SUBSTANCES**

Aspects of DEQ's water quality standards implementation related to the regulation of hazardous substances is described in Part II(k), Land Protection.

(p) **WELLHEAD AND SURFACE SOURCE WATER PROTECTION**

This jurisdictional area is subsumed under the WQD's source water protection program, which includes both surface waters and groundwaters.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** The DEQ source water protection program provides for a focus on water quality antidegradation and protection of beneficial uses for both surface waters and groundwaters.

(2) **Application of USAP.** The making of beneficial use support and impairment determinations for surface waters is not a component of this jurisdictional area.

(3) **Description of programs affecting water quality.** The DEQ's source water protection program has a surface source water protection program which parallels the concept of the existing EPA-approved wellhead protection program, as well as a continuation of the existing wellhead protection program. The delineation process will follow the same format in identifying three protection zones for both surface sources and groundwater sources. Similar procedures and guidelines are used to encourage local participation and implementation.

(4) **Technical information and procedures for implementation.** The WQD Source Water Protection Plan provides the technical guidance and procedures for implementation of this program.

(5) **Integration of WQSIP into water quality management activities.** Integration of the Plan will be through rules and internal WQD policies and guidelines, as well as coordination with other state and federal agencies.

(6) **Compliance with mandated statewide water quality requirements.** The groundwater portion of the Source Water Protection Plan provides a basis for delineation of special source groundwaters. Coordination with other affected entities is addressed in the Source Water Protection Plan.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** Special monitoring may be initiated if potential sources of contamination of groundwater or surface water are identified.

(q) **GROUNDWATER PROTECTION**

(1) Descriptions of groundwater quality protection procedures in the various DEQ program areas are provided in the subsections dealing with Land Protection, Water and Wastewater Treatment Systems, and Wellhead and Surface Source Water Protection.

(2) For those locations identified in OAC 252:730, Appendix H as a limited use groundwater, and there is a request for the use of said groundwater, certain limitations on the extraction and the use of the groundwater apply.

(r) **UTILIZATION AND ENFORCEMENT OF OWQS AND WQS IMPLEMENTATION**

This subsection describes compliance inspection and enforcement activities of permitted point source dischargers and other wastewater treatment facilities conducted by the local ECLS offices and the WQD Municipal and Industrial Enforcement Sections. Utilization of the OWQS and WQS implementation by other DEQ program areas is described under the other jurisdictional areas of this Plan.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** The WQD Municipal and Industrial Enforcement Sections ensure that antidegradation requirements and protection of beneficial uses is maintained by performing inspections of and, if necessary, taking enforcement action for significant permit violations against OPDES permit

holders. Required inspections, bypass reporting requirements, and procedures for investigating and resolving complaints are directed towards removing threats to water quality, restoration of water quality where beneficial uses are threatened, and maintaining water quality where beneficial uses are supported. Noncompliance with administrative rules and OPDES permits subjects the facility to enforcement action. The WQD Municipal and Industrial Enforcement Sections ensure that wastewater treatment systems comply with antidegradation requirements and protect beneficial uses by monitoring such systems and initiating enforcement action against treatment systems that violate OPDES permit conditions. Total retention (non-discharging) lagoon systems are inspected by ECLS to ensure the systems are being properly maintained. Systems that land apply wastewater or sludge are inspected to ensure the systems follow the technical requirements and criteria in their land application permits and/or sludge management plans. Systems which are not properly maintaining and operating their systems based on these inspections are subject to enforcement action.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this jurisdictional area.

(3) **Description of programs affecting water quality.** All OPDES permittees are subject to inspections of facilities to ensure that they are being properly operated and maintained. Additionally, permit holders are required to implement a self-monitoring program and submit analytical results to the DEQ as required by each facility's OPDES permit. These results are received monthly, logged into the PCS or ICIS database, and reviewed to ensure compliance with the OPDES permit. All unpermitted system bypasses are required to be reported in order to track which facilities may be experiencing collection system or treatment facility overloading problems. The WQD Municipal and Industrial Enforcement Sections are an integral part of the environmental complaint process, bearing the responsibility of investigating and carrying out enforcement action when necessary, often in conjunction with environmental specialists from the ECLS Division's local county offices. ECLS Division environmental specialists in the local DEQ offices conduct inspections of all permitted wastewater facilities at a prescribed frequency. When significant violations are identified, notices to comply are issued by the local DEQ office and follow up inspections are conducted within two weeks. If the violation persists, the facility is referred to the WQD to initiate formal enforcement procedures. Violations of on-site sewage regulations (OAC 252:641) are identified both through the inspection of system installations and through the investigation of complaints of surfacing or discharging sewage. In both cases, the ECLS Division and the WQD have implemented standard enforcement procedures including NOV, CO and AO designed to ensure prompt return to compliance by violators. Methods of monitoring systems include inspections, review of bypass reports and review of discharge monitoring reports. Additionally, the environmental complaint process is effective in determining systems which may pose threats to water quality. Systems which do not discharge wastewater are routinely inspected and enforcement action is taken if the system is not properly maintained. All treatment systems are required to comply with their OPDES permit and failure to comply subjects the system to enforcement action.

(4) **Technical information and procedures for implementation.** Facility performance is monitored through inspections, DMRs, bypass reports and the filing of environmental complaints. One or more of these systems may be used to initiate enforcement action against a facility as they may identify a failure of the facility to comply with permit requirements and state or federal regulations. Enforcement actions may include an NOV, CO or AO.

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Enforcement actions may involve compliance schedules, which are tracked through a database and reviewed monthly to ensure compliance with the tasks required to bring the system into compliance. The ECLS Division has established procedures for facilities found not in compliance with applicable regulations. Typically, when the ECLS environmental specialist identifies a critical violation, he/she issues the facility a written warning to correct the situation within two weeks. If the facility remains non-compliant after two weeks, the facility is referred to the Water Quality Division to initiate formal enforcement action. ECLS has developed a procedure to ensure compliance with on-site sewage regulations. Non-compliance may result from either installation deficiencies found during the construction inspection or from cases of surfacing sewage found during investigations of complaints. In either case, if an NOV and follow-up inspection do not result in the system coming back into compliance, the owner of the system may be subjected to other enforcement actions.

(5) **Integration of WQSIP into water quality management activities.** To the extent integration of the Plan requires the Department to establish policies of general applicability and future effect, that implement statutory language, or that describe the procedure and practice before the DEQ, the DEQ will promulgate such policies through the rule making provisions of the Administrative Procedures Act. Rules will be added or amended as appropriate to the various chapters of the DEQ's existing rules.

(6) **Compliance with mandated statewide water quality requirements.** The WQD Municipal and Industrial Enforcement Sections' water quality management activities comply with applicable statewide water quality requirements by enforcing adherence to the effluent limitations and other special conditions contained in OPDES permits, which are based on the WQMP, CPP, OWQS and WQS implementation criteria.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** EPA Region 6 oversees the water quality management activities of the WQD Municipal and Industrial Enforcement Sections for major dischargers, including CEIs, enforcement activities and compliance schedules.

(s) **ENVIRONMENTAL REGULATION, POLLUTION CONTROL AND ABATEMENT.**

This program area is related to the assumption of jurisdiction by the DEQ of surface water and groundwater pollution issues not subject to the statutory authority of other state environmental agencies. Such issues would be subsumed under other program areas in this Plan. Thus, this program area is not directly applicable to WQS implementation.

(t) **PUBLIC AND PRIVATE WATER SUPPLIES.**

This program area is related to drinking water supplies and treatment and thus is not directly applicable to WQS implementation.

(u) **AIR QUALITY.**

This program area is not directly applicable to WQS implementation.

(v) **COMPUTERIZED WATER QUALITY DATA INFORMATION SYSTEM.**

This program area is not directly applicable to WQS implementation.

PART III. PUBLIC AND INTERAGENCY PARTICIPATION

(a) **GENERAL.**

(1) **Initial promulgation of Plan.** The initial promulgation of the Plan will receive public and interagency review and comment. This required element will be completed when the public participation period has been completed and a response to all comments received as a result of the public participation process has been appended to the Plan.

(2) **Revisions to Plan.** As with initial promulgation, triennial reviews of and revisions to the Plan, as well as any intermediate revisions thereto, shall undergo public and interagency review, and the response to all comments received shall be appended to the Plan.

(b) **SUMMARY OF COMMENTS RECEIVED AND RESPONSE TO COMMENTS.**

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APPENDIX B. PRIORITY AND NONPRIORITY POLLUTANTS WITH NUMERICAL CRITERIA REQUIRING REASONABLE POTENTIAL SCREENING [REVOKED]

APPENDIX B. PRIORITY AND NONPRIORITY POLLUTANTS WITH NUMERICAL CRITERIA REQUIRING REASONABLE POTENTIAL SCREENING [NEW]

The priority pollutants are listed in Table B-1. Those having state numerical criteria or federal numerical guidelines for the consumption of fish flesh (re: NRWQC), and which require reasonable potential screening if present in an effluent are marked with a diamond (♦). Pollutants with state numerical criteria are indicated according to type of criteria. Pollutants which have NRWQC human health/fish flesh guidelines are screened only if the Fish Consumption beneficial use applies to the discharge and there is no state criterion for the pollutant. Predicted exceedances of NRWQC guidelines will result in effluent and/or background monitoring. Nonpriority pollutants with state and federal criteria are listed in Table B-2. WET testing parameters and their STORET numbers are listed in Table B-3.

Table B-1. Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQL (µg/l)	State Criteria ²					
				NRWQC Human Health ¹	Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Metals, Cyanide and Total Phenols	Antimony, total	7440360	01097	60	♦	---	---	---	---
	Arsenic, total	7440382	01002	0.5	♦	♦	♦	♦	---
	Beryllium, total	7440417	01012	5	---	---	---	---	---
	Cadmium, total	7440439	01027	1	---	♦	♦	♦	---
	Chromium, total	7440473	01034	10	---	♦	♦	♦	---
	Chromium (3+)	16065831	01033	10					
	Chromium (6+)	18540299	01032	10					
	Copper, total	7440508	01042	1	♦	♦	---	♦	---
	Lead, total	7439921	01051	0.5	---	♦	♦	♦	---
	Mercury, total	7439976	71900	0.05	♦	♦	♦	♦	---
	Nickel, total	7440020	01067	10	♦	♦	♦	---	---
	Selenium, total	7782492	01147	5	♦	♦	---	♦	---
	Silver, total	7440224	01077	0.5	---	♦	♦	♦	---
	Thallium, total	7440280	01059	0.5	♦	♦	♦	---	---
	Zinc, total	7440666	01092	20	♦	♦	---	♦	---
	Cyanide, total	57125	00720	10	♦	♦	---	♦	---
	Phenols, total	108952	46000	10	---	---	♦	---	---
	2,3,7,8-Tetrachlorodibenzo-p Dioxin	1746016	34675	0.00001	♦	---	♦	---	---

¹ From National Recommended Water Quality Criteria, Pub. No. EPA 822-Z-99-001, April 1999

² DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or

National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQL (µg/l)	State Criteria ²					
				NRWQC Human Health ¹	Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Volatile Organics	Acrolein	107028	34210	50	◆	---	◆	---	---
	Acrylonitrile	107131	34215	50	◆	◆	◆	---	---
	Benzene	71432	34030	10	◆	◆	◆	---	---
	Bromoform	75252	32104	10	◆	---	---	---	---
	Carbon Tetrachloride	56235	32102	10	◆	---	◆	---	---
	Chlorobenzene	108907	34301	10	◆	---	---	---	---
	Chlorodibromomethane	124481	32105	10	◆	---	---	---	---
	Chloroethane	75003	34311	50	---	---	---	---	---
	2-Chloroethylvinyl ether	110758	34576	10	---	---	---	---	---
	Chloroform	67663	32106	10	◆	---	◆	---	---
	Dichlorobromomethane	75274	32101	10	◆	---	◆	---	---
	1,1-Dichloroethane	75343	34496	10	---	---	---	---	---
	1,2-Dichloroethane	107062	34536	10	◆	---	---	---	---
	1,1-Dichloroethylene	75354	34501	10	◆	---	---	---	---
	1,2-Dichloropropane	78875	34541	10	◆	---	---	---	---
	1,3-Dichloropropylene	542756	34561	10	◆	---	---	---	---
	Ethylbenzene	100414	34371	10	◆	---	◆	---	---
	Methyl bromide [Bromomethane]	74839	34413	50	◆	---	---	---	---
	Methyl chloride [Chloromethane]	74873	34418	50	---	---	---	---	---
	Methylene chloride	75092	34423	20	◆	---	---	---	---
	1,1,2,2-Tetrachloroethane	79345	34516	10	◆	---	---	---	---
	Tetrachloroethylene	127184	34475	10	◆	◆	◆	---	---
	Toluene	108883	34010	10	◆	◆	◆	---	---
	1,2-Trans-dichloroethylene	156605	34546	10	◆	---	---	---	---
	1,1,1-Trichloroethane [1-1-1 TCE]	71556	34506	10	---	---	◆	---	---
	1,1,2-Trichloroethane	79005	34511	10	◆	---	---	---	---
	Trichloroethylene	79016	39180	10	◆	---	---	---	---
	Vinyl chloride	75014	39175	10	◆	---	---	---	---

¹ From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999

² DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or

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National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQL (mg/l)	NRWQC Human Health ¹	State Criteria ²				
					Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Acid Organics	2-Chlorophenol	95578	34586	20	◆	---	---	---	---
	2,4-Dichlorophenol	120832	34601	20	◆	---	---	---	---
	2,4-Dimethylphenol	105679	34606	20	◆	---	---	---	---
	4,6-Dinitro-o-cresol [2-Methyl-4,6-dinitrophenol]	534521	34657	50	◆	---	---	---	---
	2,4-Dinitrophenol	51285	34616	50	◆	---	---	---	---
	2-Nitrophenol	88755	34591	20	---	---	---	---	---
	4-Nitrophenol	100027	34646	50	---	---	---	---	---
	p-Chloro-m-cresol	59507	34452	20	---	---	---	---	---
	Pentachlorophenol	87865	39032	50	◆	◆	◆	---	---
	Phenol	108952	34694	20	◆	---	---	---	---
Base / Neutral Organics	2,4,6-Trichlorophenol	88062	34621	20	◆	---	---	---	---
	Acenaphthene	83329	34205	20	---	---	---	---	---
	Acenaphthylene	208968	34200	20	---	---	---	---	---
	Anthracene	120127	34220	20	◆	---	---	---	---
	Benzidine	92875	39120	50	◆	---	---	◆	---
	Benzo(a)anthracene	56553	34526	20	◆	---	---	---	---
	Benzo(a)pyrene	50328	34247	20	◆	---	---	---	---
	Benzo(b)fluoranthene [3,4-Benzofluoranthene]	205992	34230	20	◆	---	---	---	---
	Benzo(ghi)perylene	191242	34521	20	---	---	---	---	---
	Benzo(k)fluoranthene	207089	34242	20	◆	---	---	---	---
	Bis (2-chloroethoxy) methane	111911	34278	20	---	---	---	---	---
	Bis (2-chloroethyl) ether	111444	34273	20	◆	---	---	---	---
	Bis (2-chloroisopropyl) ether	39638329	34283	20	◆	---	---	---	---
	Bis (2-ethylhexyl) phthalate	117817	39100	20	◆	---	◆	---	---
	4-Bromophenyl phenyl ether	101553	34636	20	---	---	---	---	---
	Butylbenzyl phthalate	85687	34292	20	◆	---	◆	◆	---
	2-Chloronaphthalene	91587	34581	20	◆	---	---	---	---
	4-Chlorophenyl phenyl ether	7005723	34631	20	---	---	---	---	---
	Chrysene	218019	34320	20	◆	---	---	---	---
	Dibenzo(a,h)anthracene	53703	34556	20	◆	---	---	---	---
1,2-Dichlorobenzene	95501	34536	20	◆	---	---	---	---	
1,3-Dichlorobenzene	541731	34566	20	◆	---	---	---	---	

¹ From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999

² DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or

National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQL (µg/l)	NRWQC Human Health ¹	State Criteria ²				
					Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Base / Neutral Organics	1,4-Dichlorobenzene	106467	34571	20	◆	---	---	---	---
	3,3'-Dichlorobenzidine	91941	34631	20	◆	---	---	---	---
	Diethyl phthalate	84662	34336	20	◆	---	◆	---	---
	Dimethyl phthalate	131113	34341	20	◆	---	◆	---	---
	Di-n-butyl phthalate	84742	39110	20	◆	---	◆	---	---
	2,4-Dinitrotoluene	121142	34611	20	◆	---	---	---	---
	2,6-Dinitrotoluene	606202	34626	20	---	---	---	---	---
	Di-n-octyl phthalate	117840	34596	20	---	---	---	---	---
	1,2-Diphenylhydrazine (as Azobenzene)	122667	34346	20	◆	---	---	---	---
	Fluoranthene	206440	34376	20	◆	---	---	---	---
	Fluorene	86737	34381	20	◆	---	---	---	---
	Hexachlorobenzene	118741	39700	10	◆	---	◆	---	---
	Hexachlorobutadiene	87683	34391	20	◆	---	---	---	---
	Hexachlorocyclopentadiene	77474	34386	20	◆	---	---	---	---
	Hexachloroethane	67721	34396	20	◆	---	---	---	---
	Ideno (1,2,3-cd) pyrene	193395	34403	20	◆	---	---	---	---
	Isophorone	78591	34408	20	◆	---	---	---	---
	Naphthalene	91203	34696	10	---	---	---	---	---
	Nitrobenzene	98953	34447	20	◆	---	---	---	---
	n-Nitrosodimethylamine	62759	34438	50	◆	---	---	---	---
	n-Nitrosodi-n-propylamine	621647	34428	20	◆	---	---	---	---
	n-Nitrosodiphenylamine	86306	34433	20	◆	---	---	---	---
	Phenanthrene	85018	34461	20	---	---	---	---	---
Pyrene	129000	34469	20	◆	---	---	---	---	
1,2,4-Trichlorobenzene	120821	34551	20	◆	---	---	---	---	
Pesticides	Aldrin	309002	39330	0.05	◆	◆	◆	---	---
	alpha-BHC	319846	39337	0.05	◆	---	---	---	---
	beta-BHC	319857	39338	0.05	◆	---	---	---	---
	gamma-BHC [Lindane]	58899	34266	0.05	◆	◆	◆	◆	---
	delta-BHC	319868	34259	0.05	---	---	---	---	---
	Chlordane	57749	39350	0.2	◆	◆	◆	---	---
	4,4'-DDT	50293	39300	0.05	◆	◆	◆	---	---
	4,4'-DDE	72559	39320	0.05	◆	---	---	---	---

Emergency Adoptions

¹ From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999

² DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQL (µg/l)	NRWQC Human Health ¹	State Criteria ²				
					Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Pesticides	4,4'-DDD	72548	39310	0.05	♦	---	♦	---	---
	Demeton			1					
	Diazinon			1					
	Dieldrin	60571	39380	0.05	♦	♦	♦	---	---
	alpha-Endosulfan	959988	34361	0.05	♦	♦	---	---	---
	beta-Endosulfan	33213659	34356	0.05	♦	♦	---	---	---
	Endosulfan sulfate	1031078	34351	0.05	♦	---	---	---	---
	Endrin	72208	39390	0.05	♦	♦	♦	♦	---
	Endrin aldehyde	7421934	34366	0.05	♦	---	---	---	---
	Heptachlor	76448	39410	0.05	♦	♦	♦	---	---
	Heptachlor epoxide	1024573	39420	0.05	♦	---	---	---	---
Toxaphene	8001352	39400	0.3	♦	♦	---	♦	---	
PCBs	PCB-1242		39496	0.25	---	---	---	---	---
	PCB-1254		39504	0.25	---	---	---	---	---
	PCB-1221		39488	0.25	---	---	---	---	---
	PCB-1232		39492	0.25	---	---	---	---	---
	PCB-1248		39500	0.25	---	---	---	---	---
	PCB-1260		39508	0.25	---	---	---	---	---
	PCB-1016		34671	0.25	---	---	---	---	---
	PCBs, total		04166	0.25	♦	♦	♦	---	---
2,4,5 – TP (Silvex)			0.25						

¹ From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999

² DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5

Table B-2. Nonpriority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQL (µg/l)	NRWQC Human Health ¹	State Criteria ²				
					Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Nonpriority Pollutants	Ammonia	7664417	00610	100	---	³	---	---	---
	Asbestos	1332214	948	---	◆	---	---	---	---
	Barium	7440393	01007	10	◆	---	---	◆	---
	Bis-chloromethyl ether	542881	34268	20	◆	---	---	---	---
	Chloride	16887006	941	10000	---	---	---	---	◆
	Chlorine	7782505	50060	100	---	³	---	---	---
	2-(2,4,5-Trichlorophenoxy) propionic acid [2,4,5-TP Silvex]	93721	39760	0.5	---	◆	---	◆	---
	2,4-Dichlorophenoxyacetic acid [2,4-D]	94757	39730	1	---	---	---	◆	---
	Chlorpyrifos [Dursban]	2921882	81403	0.05	---	◆	---	---	---
	Demeton	8065483	39560	1	---	◆	---	---	---
	Detergents, total		51582	100	---	---	---	◆	---
	Diazinon	333415	10408	1	---	◆	---	---	---
	Fluoride @ 90° F	16984488	951	1000	---	---	---	◆	---
	Guthion [Methyl azinphos]	86500	39580	1	---	◆	---	---	---
	Hexachlorocyclohexane-Technical	319868	77835	5	◆	---	---	---	---
	Hexahydro-1,3,5-trinitro-1,3,5-triazine [RDX]	121824	81364	140	---	◆	---	---	---
	Iron	7439896	00980	200	◆	---	---	---	---
	Malathion	121755	39530	1	---	◆	---	---	---
	Manganese	7439965	01055	50	◆	---	---	---	---
	Methoxychlor	72435	39480	0.05	◆	◆	---	◆	---
	Methylene blue active substances	61734	47021	100	---	◆	---	◆	---
	Mirex	2385855	39755	0.05	---	◆	---	---	---
	Nitrate	14797558	00620	50	◆	---	---	◆	---
	Nitrosamines		---	50	◆	---	---	---	---
	n-Nitrosodibutylamine	924163	78207	50	◆	---	---	---	---

¹From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.

²DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5.

³Ammonia and chlorine criteria apply to implementation of narrative toxicity criterion under OAC 252:730 and 40 CFR Part 122.44(d)(1)(vi).

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Table B-2 (continued). Nonpriority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

Pollutant	CAS No.	STORE T No.	MQ L (µg/l)	NRWQC Human Health ¹	State Criteria ²				
					Aquatic Toxicity	Human Health	Raw Water	Agriculture	
Nonpriority Pollutants	n-Nitrosodiethylamine	55185	78200	50	◆	---	---	---	---
	n-Nitrosopyrrolidine	930552	78206	50	◆	---	---	---	---
	Nonylphenol	25154523	10395	100	---	◆	---	---	---
	Parathion	56382	39540	1	---	◆	---	---	---
	Pentachlorobenzene	608935	77793	50	◆	---	---	---	---
	Perchlorate	7601903	3215	5	---	◆	◆	---	---
	Phthalate esters (except butylbenzyl)		39117	---	---	---	---	◆	---
	Sulfate		00946	10000	---	---	---	---	◆
	Total Dissolved Solids [TDS]		70300	10000	---	---	---	---	◆
	1,2,4,5-Tetrachlorobenzene	95943	78028	50	◆	---	---	---	---
	2,4,5-Trichlorophenol	95954	81848	50	◆	---	---	---	---
	2,4,6-Trinitrotoluene		81360	---	---	◆	---	---	---

¹From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.

²DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5.

Table B-3. WET Testing and WET Limit Parameters

Pollutant			STORE T No.	NRWQC Human Health ¹	State Criteria ²			
					Aquatic Toxicity	Human Health	Raw Water	Agriculture
48-hour Acute LC50, Static Renewal, Freshwater	Daphnia magna	P/F survival	TIM3C	---	◆	---	---	---
		LC50 effluent concentration	TAM3C	---	◆	---	---	---
		% mortality in 100% effluent	TJM3C	---	◆	---	---	---
	Daphnia pulex	P/F survival	TIM3D	---	◆	---	---	---
		LC50 effluent concentration	TAM3D	---	◆	---	---	---
		% mortality in 100% effluent	TJM3D	---	◆	---	---	---
	Pimephales promelas	P/F survival	TIM6C	---	◆	---	---	---
		LC50 effluent concentration	TAM6C	---	◆	---	---	---
		% mortality in 100% effluent	TJM6C	---	◆	---	---	---
	WET Limit	LC50 > 100%	22414	---	◆	---	---	---
7-day Chronic NOEC, Static Renewal, Freshwater	Ceriodaphnia dubia	P/F survival	TLP3B	---	◆	---	---	---
		NOECL (lethality)	TOP3B	---	◆	---	---	---
		% mortality in critical dilution	TJP3B	---	◆	---	---	---
		P/F reproduction	TGP3B	---	◆	---	---	---
		NOECS (reproduction)	TPP3B	---	◆	---	---	---
	% CV	TQP3B	---	◆	---	---	---	
	Pimephales promelas	P/F survival	TLP6C	---	◆	---	---	---
		NOECL (lethality)	TOP6C	---	◆	---	---	---
		% mortality in critical dilution	TJP6C	---	◆	---	---	---
		P/F growth	TGP6C	---	◆	---	---	---
		NOECS (growth)	TPP6C	---	◆	---	---	---
	% CV	TQP6C	---	◆	---	---	---	
	WET Limit	NOECL ≥ critical dilution	22414	---	◆	---	---	---

¹ From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.

² DEQ-adopted numerical water quality criteria, OAC 252:730, Subchapter 5.

APPENDIX C. METHODOLOGY AND EQUATIONS FOR CHARACTERIZING EFFLUENT AND BACKGROUND CONCENTRATIONS IN DETERMINATION OF REASONABLE POTENTIAL TO EXCEED NUMERICAL CRITERIA [REVOKED]

APPENDIX C. METHODOLOGY AND EQUATIONS FOR CHARACTERIZING EFFLUENT AND BACKGROUND CONCENTRATIONS IN DETERMINATION OF REASONABLE POTENTIAL TO EXCEED NUMERICAL CRITERIA [NEW]

I. EFFLUENT

A. Measures of central tendency. $C_{E(\text{mean})}$ represents the mean of an effluent distribution. $C_{E(\text{mean})}$ is a geometric mean, unless the geometric mean is not determinable in which case an arithmetic mean is used. Where one or the other form of the mean must be used in an equation, that form is explicitly stated.

(1) $C_{E(\text{avg})}$. $C_{E(\text{avg})}$ is calculated as follows:

$$C_{E(\text{avg})} = \frac{\left(\sum_{i=1}^N x_i \right)}{N} \quad [\text{C-1}]$$

(2) $C_{E(\text{geomean})}$. $C_{E(\text{geomean})}$ is calculated according to either of the following two forms, which are equivalent.

$$C_{E(\text{geomean})} = \text{EXP} \left(\frac{\left(\sum_{i=1}^N \ln(x_i) \right)}{N} \right) = \sqrt[N]{\prod_{i=1}^N x_i} \quad [\text{C-2}]$$

B. Effluent variability. An effluent data set's standard deviation is the primary measure of its variability. Generally, as the mean of an effluent distribution increases, its standard deviation also tends to increase. The coefficient of variation is a measure of a data set's variability relative to its arithmetic mean.

(1) **Standard deviation of untransformed effluent data set (s_x).** The standard deviation of an untransformed effluent data set is calculated as follows:

$$s_x = \sqrt{\frac{N \sum_{i=1}^N (x_i^2) - \left(\sum_{i=1}^N x_i \right)^2}{N(N-1)}} \quad [\text{C-3}]$$

where N is the number of data points in the effluent data set.

(2) **Standard deviation of log-transformed effluent data set ($s_{\ln(x)}$).** The standard deviation of a log-transformed effluent data set is calculated as follows:

$$s_{\ln(x)} = \sqrt{\frac{N \sum_{i=1}^N (\ln(x_i))^2 - \left(\sum_{i=1}^N \ln(x_i) \right)^2}{N(N-1)}}, \quad [C-4]$$

where N is the number of data points in the effluent data set.

The standard deviation of a log-transformed data set applies only to the transformed data set and cannot be translated back into an equivalent untransformed data set standard deviation, for example:

$$\text{EXP}(s_{\ln(x)}) \neq s_x$$

(3) **CV.** The CV of an untransformed data set is calculated as follows, when using at least ten (10) data points (if less than ten (10) data points are available, a value of 0.6 is assumed):

$$\text{CV} = \frac{s_x}{C_{E(\text{avg})}}, \quad [C-5]$$

where $C_{E(\text{avg})}$ and s_x are determined according to Equations C-1 and C-3, respectively.

C. C_{95} and $C_{95(M)}$. The use of both C_{95} and $C_{95(M)}$ assumes a log-normal effluent distribution. For the purpose of determining whether **effluent limitations** are required, C_{95} represents the 95th percentile effluent concentration. For the purpose of determining whether further **effluent monitoring** is required, if C_{95} does not exhibit reasonable potential then $C_{95(M)}$ is used.

(1) **C_{95} .** The method by which C_{95} is determined is dependent on whether there are 10 or more data points available.

(a) **Less than 10 data points available.** The mean effluent concentration ($C_{E(\text{mean})}$) is multiplied by a reasonable potential factor (RPF_{95}), which represents the 95th percentile maximum likelihood estimator for a log-normal distribution, according to Equation C-6. If only one data point is available, it is assumed to represent the effluent mean. RPF_{95} is calculated according to Equation C-7, assuming a CV of 0.6.

$$C_{95} = C_{E(\text{mean})} \times \text{RPF}_{95} \quad [C-6]$$

$$\text{RPF}_{95} = \text{EXP}\left(1.645 \sqrt{\ln(1+CV^2)} - 0.5 \ln(1+CV^2)\right) \quad [C-7]$$

Since a CV of 0.6 is assumed, $RPF_{95} = 2.135$ and Equation C-6 reduces to $C_{95} = C_{E(\text{mean})} \times 2.135$. Where determinable, the geometric mean, $C_{E(\text{geomean})}$, shall be used as $C_{E(\text{mean})}$ in Equation C-6. The arithmetic mean, $C_{E(\text{avg})}$, may be used if the geometric mean is unknown or undeterminable.

(b) **Ten or more data points available.** C_{95} is obtained directly from the data set as the inverse of the cumulative log-normal distribution function at a 95% probability using Equation C-8.

$$C_{95} = \text{EXP}(\ln(x)_{\text{avg}} + 1.645 \times s_{\ln(x)}) \quad [\text{C-8}]$$

where $\ln(x)_{\text{avg}}$ is the arithmetic mean of the log-transformed effluent data set and $s_{\ln(x)}$ is the standard deviation of the log-transformed effluent data set.

(2) **$C_{95(M)}$.** The smaller the size of an effluent data set, the greater the uncertainty of its distribution. The extreme case occurs where only one data point is available. Where less than 10 data points are available to determine C_{95} , further effluent monitoring may be warranted for the purpose of future reevaluation of reasonable potential. The method used, referred to as the TSD method, is described in Section 3.3.2 of Technical Support Document for Water Quality-Based Toxics Control, EPA Publication No. EPA/505/2-90-001, March 1991. A log-normal distribution and a CV of 0.6 are assumed. $C_{95(M)}$ is calculated according to Equation C-9.

$$C_{95(M)} = C_{E(\text{max})} \times RPF_{95(M)} \quad [\text{C-9}]$$

$C_{E(\text{max})}$ is the highest concentration of a toxicant in its effluent data set. If only one data point is available, it is considered to be $C_{E(\text{max})}$. $RPF_{95(M)}$ is determined at a 95% confidence level and a 95% probability basis, according to Equation C-10.

$$RPF_{95(M)} = \frac{\text{EXP}\left(1.645 \sqrt{\ln(1+CV^2)} - 0.5 \ln(1+CV^2)\right)}{\text{EXP}\left(z_N \sqrt{\ln(1+CV^2)} - 0.5 \ln(1+CV^2)\right)} \quad [\text{C-10}]$$

where z_N is the upper k^{th} percentile of the normal distribution, $k = (1 - \text{confidence level})^{1/N} = (0.05)^{1/N}$ for the 95% confidence level, and $CV=0.6$.

Table C-1 lists RPF_{95(M)} values for vales of N from 1 to 9, where CV is assumed to be 0.6.

Table C-1. RPF_{95(M)} and z_N Values for N<10

N	z _N	RPF _{95(M)}
1	-1.645	6.199
2	-0.760	3.795
3	-0.336	3.000
4	-0.068	2.585
5	0.124	2.324
6	0.272	2.141
7	0.390	2.006
8	0.489	1.898
9	0.574	1.811

(II) **BACKGROUND (C_B).**

(A) Numerical criteria for toxic substances: As described in OAC 252:690-3-11 and 14, C_B is the background concentration representative of low stream flow (7Q2) conditions.

(B) Human health and raw water criteria. As described in OAC 252:690-3-11 and 15, C_B is the long term background concentration representative of average stream flow conditions, and is expressed as a geometric mean.

(C) Agriculture criteria. As described in OAC 252:690-3-11 and 16, if site-specific mineral constituent background data is used (as opposed to the historical YMS and SS criteria in Appendix F of OAC 252:730), C_B is calculated as the arithmetic average of the site-specific background data distribution. If historical YMS and SS data from Appendix F of OAC 252:730 are used, C_B is calculated according to Equation C-11.

$$C_B = 2 \times C_{B(YMS)} - C_{B(SS)} \quad [C-11]$$

APPENDIX D. WHOLE EFFLUENT TOXICITY (WET) TESTING CRITICAL DILUTIONS AND DILUTION SERIES [REVOKED]

APPENDIX D. WHOLE EFFLUENT TOXICITY (WET) TESTING CRITICAL DILUTIONS AND DILUTION SERIES [NEW]

The narrative toxicity criterion is implemented according to procedures in OAC 252:740 and OAC 252:690-3-17 through 3-43. Critical dilutions are expressed in terms of percent effluent. Both types of WET testing require that test organisms be subjected to a series of effluent dilutions based on the critical dilution. Tables D-1 and D-2 reflect the 0.75 dilution series to be used for each percent critical dilution. For WET testing purposes, Q_c is the design flow for a municipal POTW or the highest monthly average flow over the most recent two year period of record for an industrial facility. Q_u is the higher of the 7Q2 or 1cfs. $Q^* = Q_c/Q_u$.

- (1) **Acute WET testing critical dilution.** The ACD is 100%.
- (2) **Chronic WET testing critical dilution for streams.** Equations for calculating the CCD are as follows:

$$CCD = 100 \times \frac{1.94 Q^*}{(1 + Q^*)}, \text{ where } Q^* \leq 0.1823. \quad [D-1]$$

$$CCD = 100 \times \frac{1}{(6.17 - 15.51 Q^*)}, \text{ where } 0.1823 < Q^* < 0.3333. \quad [D-2]$$

$$CCD = 100, \text{ where } Q^* \geq 0.3333. \quad [D-3]$$

Table D-1. 0.75 Dilution Series for Critical Dilutions from 10% through 75%

Percent Effluent					
Dilution 1	Dilution 2	Dilution 3	Dilution 4 (Critical Dil)	Dilution 5	Dilution 6
4.2	5.6	7.5	10	13	---
4.6	6.2	8.3	11	15	---
5.1	6.8	9.0	12	16	---
5.6	7.5	10	13	17	---
5.9	7.9	11	14	19	---
6.3	8.4	11	15	20	---
6.8	9.0	12	16	21	---
7.2	9.6	13	17	23	---
7.6	10	14	18	24	---
8.0	11	14	19	25	---
8.4	11	15	20	27	---
9.0	12	16	21	28	---
9.3	12	17	22	29	---
9.7	13	17	23	31	---
10	14	18	24	32	---
11	14	19	25	33	---
11	15	20	26	35	---
11	15	20	27	36	---
12	16	21	28	37	---
12	16	22	29	39	---
13	17	23	30	40	---
13	17	23	31	41	---
14	18	24	32	43	---
14	19	25	33	44	---
14	19	26	34	45	---
15	20	26	35	47	---
15	20	27	36	48	---
16	21	28	37	49	---
16	21	29	38	51	---
16	22	29	39	52	---
17	23	30	40	53	---
17	23	31	41	55	---
18	24	32	42	56	---
18	24	32	43	57	---
19	25	33	44	59	---
19	25	34	45	60	---
19	26	35	46	61	---
20	26	35	47	63	---
20	27	36	48	64	---

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Table D-1 (continued). 0.75 Dilution Series for Critical Dilutions from 10% through 75%

Percent Effluent					
Dilution 1	Dilution 2	Dilution 3	Dilution 4 (Critical Dil)	Dilution 5	Dilution 6
21	28	37	49	65	---
21	28	38	50	67	---
22	29	38	51	68	---
22	29	39	52	69	---
22	30	40	53	71	---
23	30	41	54	72	---
23	31	41	55	73	---
24	32	42	56	75	---
24	32	43	57	76	---
24	33	44	58	77	---
25	33	44	59	79	---
25	34	45	60	80	---
26	34	46	61	81	---
26	35	47	62	83	---
27	35	47	63	84	---
27	36	48	64	85	---
27	37	49	65	87	---
28	37	50	66	88	---
28	38	50	67	89	---
29	38	51	68	91	---
29	39	52	69	92	---
30	39	53	70	93	---
30	40	53	71	95	---
30	41	54	72	96	---
31	41	55	73	97	---
31	42	56	74	99	---
32	42	56	75	100	---

Table D-2. 0.75 Dilution Series for Critical Dilutions Above 75%

Percent Effluent					
Dilution 1	Dilution 2	Dilution 3	Dilution 4	Dilution 5 (Critical Dil)	Dilution 6
24	32	43	57	76	100
24	32	43	58	77	100
25	33	44	59	78	100
25	33	44	59	79	100
25	34	45	60	80	100
26	34	46	61	81	100
26	35	46	62	82	100
26	35	47	62	83	100
27	35	47	63	84	100
27	36	48	64	85	100
27	36	48	65	86	100
28	37	49	65	87	100
28	37	50	66	88	100
28	38	50	67	89	100
28	38	51	68	90	100
29	38	51	68	91	100
29	39	52	69	92	100
29	39	52	70	93	100
30	40	53	71	94	100
30	40	53	71	95	100
30	41	54	72	96	---
31	41	55	73	97	---
31	41	55	74	98	---
31	42	56	74	99	---
32	42	56	75	100	---

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APPENDIX E. EQUATIONS FOR IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT THE FISH AND WILDLIFE PROPAGATION BENEFICIAL USE [REVOKED]

APPENDIX E. EQUATIONS FOR IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT THE FISH AND WILDLIFE PROPAGATION BENEFICIAL USE [NEW]

(1) **General.** The temperature criterion is implemented according to procedures in OAC 252:740 and OAC 252:690-3-44 through 3-50. Wasteload allocation, criterion long term average and permit limit development equations are described in this appendix.

(2) **Reasonable potential.**
See OAC 252:740.

(3) **WLA_T.** Trout fisheries by definition require a WLA_T of 20 °C (see OAC 252:690-3-53). Other than for trout fisheries, if $\Delta T_{\max} > 2.8$ °C, a WLA is required.

(A) **Streams.**

$$WLA_T = T_a + \frac{1.44(1+Q^*)}{Q^*}, \text{ where } Q^* \leq 0.1823. \quad [E-1]$$

$$WLA_T = T_a + 17.276 - 43.428 Q^*, \text{ where } 0.1823 < Q^* < 0.3333. \quad [E-2]$$

$$WLA_T = T_a + 2.8, \text{ where } Q^* \geq 0.3333. \quad [E-3]$$

(B) **Lakes.**

$$WLA_T = T_a + \frac{56.42}{D}, \text{ where the discharge is by pipe.} \quad [E-4]$$

$$WLA_T = T_a + \frac{11.76}{\sqrt{W}}, \text{ where the discharge is by canal.} \quad [E-5]$$

(4) **LTA_T (50% probability basis).**

$$LTA_T = WLA_T \times \text{EXP} \left(0.5 \ln \left(1 + \frac{CV^2}{7} \right) \right) \quad [E-6]$$

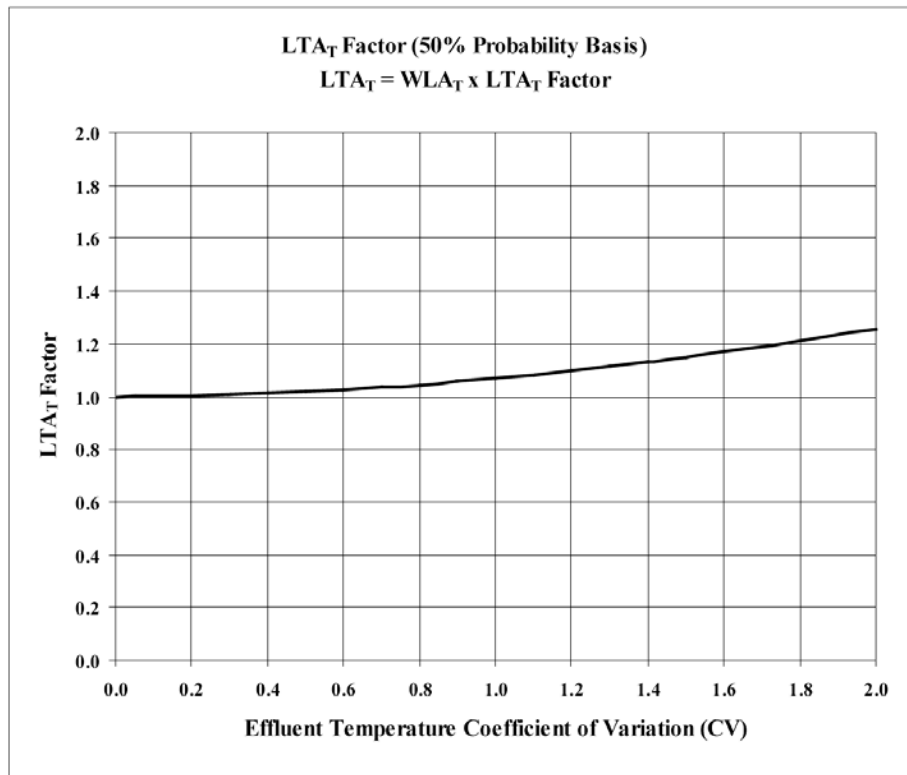


Figure E-1. Temperature LTA Factor vs. Effluent Coefficient of Variation

(5) Permit limitations.

(A) MAL_T (95% probability basis).

$$MAL_T = LTA_T \times \text{EXP} \left(1.645 \sqrt{\ln \left(1 + \frac{CV^2}{N_m} \right)} - 0.5 \ln \left(1 + \frac{CV^2}{N_m} \right) \right) \quad [E-7]$$

If calculated MAL_T exceeds 52 °C, it is capped at 52 °C for antidegradation purposes.

(B) WAL_T (95% probability basis).

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$$WAL_T = LTA_T \times \text{EXP} \left(1.645 \sqrt{\ln \left(1 + \frac{CV^2}{N_w} \right)} - 0.5 \ln \left(1 + \frac{CV^2}{N_w} \right) \right) \quad [E-8]$$

If calculated WAL_T exceeds 52 °C, it is capped at 52 °C for antidegradation purposes.

(C) DML_T

If a daily maximum limit is required for thermal antidegradation purposes, then $DML_T = 52$ °C.

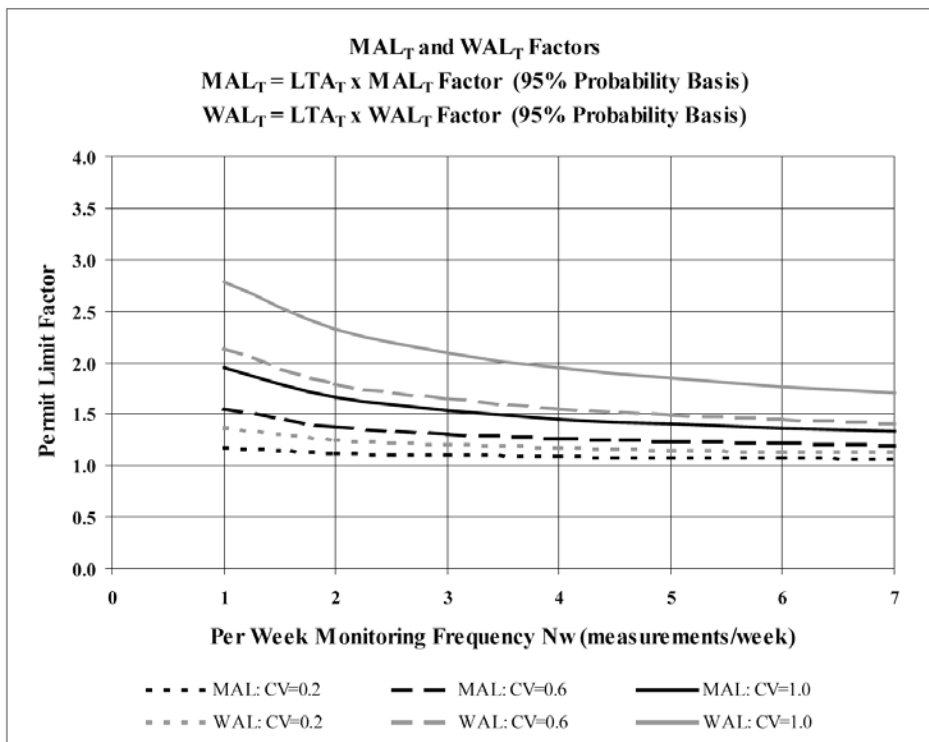


Figure E-2. Temperature MAL and WAL Permit Limit Factors vs. Per Week Monitoring Frequency N_w

APPENDIX F. EQUATIONS FOR IMPLEMENTATION OF NUMERICAL CRITERIA FOR TOXIC SUBSTANCES TO PROTECT THE FISH AND WILDLIFE PROPAGATION BENEFICIAL USE [REVOKED]

APPENDIX F. EQUATIONS FOR IMPLEMENTATION OF NUMERICAL CRITERIA FOR TOXIC SUBSTANCES TO PROTECT THE FISH AND WILDLIFE PROPAGATION BENEFICIAL USE [NEW]

- (1) **General.** Acute and chronic toxicity numerical criteria are implemented according to OAC 252:740 and OAC 252:690-3-51 through 3-57. WLA, criterion LTA and permit limit development equations are described in this appendix.
- (2) **Reasonable potential for discharges to streams.**
See OAC 252:740.
- (3) **Reasonable potential for discharge to lakes.**
See OAC 252:740.
- (4) **WLA_A and WLA_C for discharges to streams.**

(A) **Acute criteria WLA.**

$$WLA_A = C_B + \frac{100(C_A - C_B)}{Q_c}, \text{ where } Q_c \text{ is expressed in cfs.} \quad [F-1]$$

$$WLA_A = C_B + \frac{64.63(C_A - C_B)}{Q_c}, \text{ where } Q_c \text{ is expressed in mgd.} \quad [F-2]$$

(B) **Chronic criteria WLA.**

$$WLA_C = C_B + \frac{(1 + Q^*)(C_C - C_B)}{(1.94 Q^*)}, \text{ where } Q^* \leq 0.1823. \quad [F-3]$$

$$WLA_C = C_B + (6.17 - 15.51 Q^*)(C_C - C_B), \text{ where } 0.1823 < Q^* < 0.3333. \quad [F-4]$$

$$WLA_C = C_C, \text{ where } Q^* \geq 0.3333. \quad [F-5]$$

- (5) **WLA_A and WLA_C for discharges to lakes.** The chronic WLA is calculated if a chronic criterion applies. An acute WLA is used only in the absence of a chronic criterion.

$$WLA_{CA} = C_B + \frac{20.15(C_{CA} - C_B)}{D}, \text{ where the discharge is by pipe.} \quad [F-6]$$

$$WLA_{CA} = C_B + \frac{4.2(C_{CA} - C_B)}{\sqrt{W}}, \text{ where the discharge is by canal.} \quad [F-7]$$

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(6) **LTA_A and LTA_C (99% probability basis).** Whether the receiving water is a stream or lake, criterion LTAs are calculated in the same fashion. LTA_{TOX} is the more stringent of the two toxicity LTAs.

$$LTA_A = WLA_A \times \text{EXP} \left(0.5 \ln \left(1 + CV^2 \right) - 2.326 \sqrt{\ln \left(1 + CV^2 \right)} \right) \quad [\text{F-8}]$$

$$LTA_C = WLA_C \times \text{EXP} \left(0.5 \ln \left(1 + \frac{CV^2}{4} \right) - 2.326 \sqrt{\ln \left(1 + \frac{CV^2}{4} \right)} \right) \quad [\text{F-9}]$$

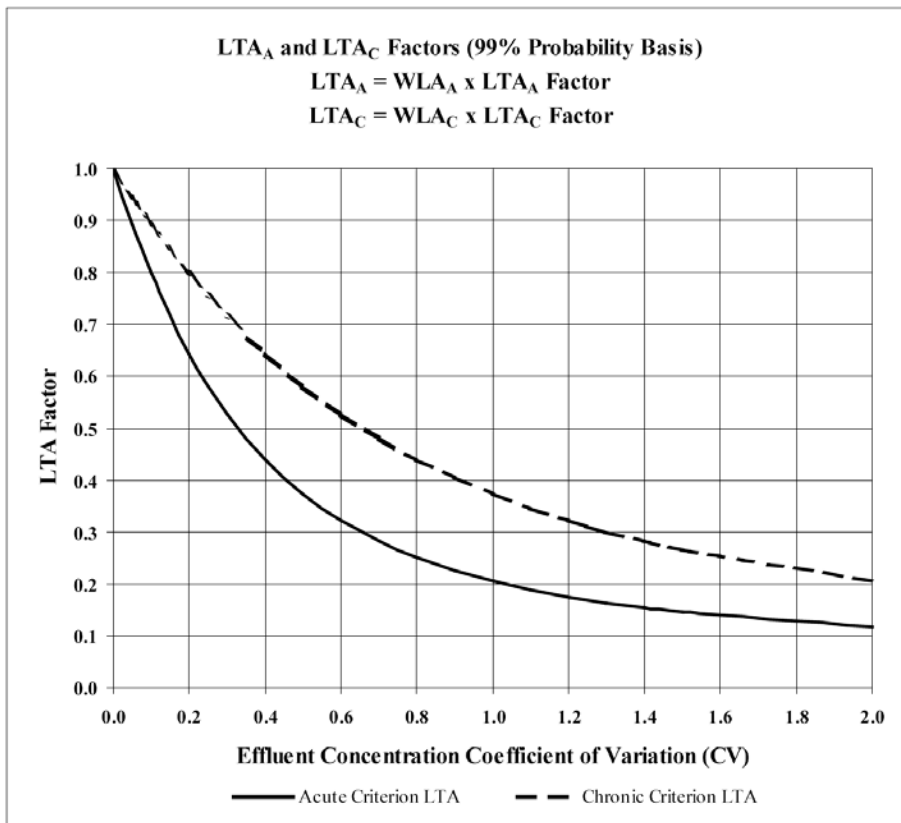


Figure F-1. Aquatic Toxicity LTA Factors vs. Effluent Coefficient of Variation

(7) **Permit limitations.**

(A) **MAL_{TOX} (95% probability basis).**

$$MAL_{TOX} = LTA_{TOX} \times \text{EXP} \left(1.645 \sqrt{\ln \left(1 + \frac{CV^2}{N_m} \right)} - 0.5 \ln \left(1 + \frac{CV^2}{N_m} \right) \right) \quad [F-10]$$

(B) DML_{TOX} (99% probability basis).

$$DML_{TOX} = LTA_{TOX} \times \text{EXP} \left(2.326 \sqrt{\ln(1 + CV^2)} - 0.5 \ln(1 + CV^2) \right) \quad [F-11]$$

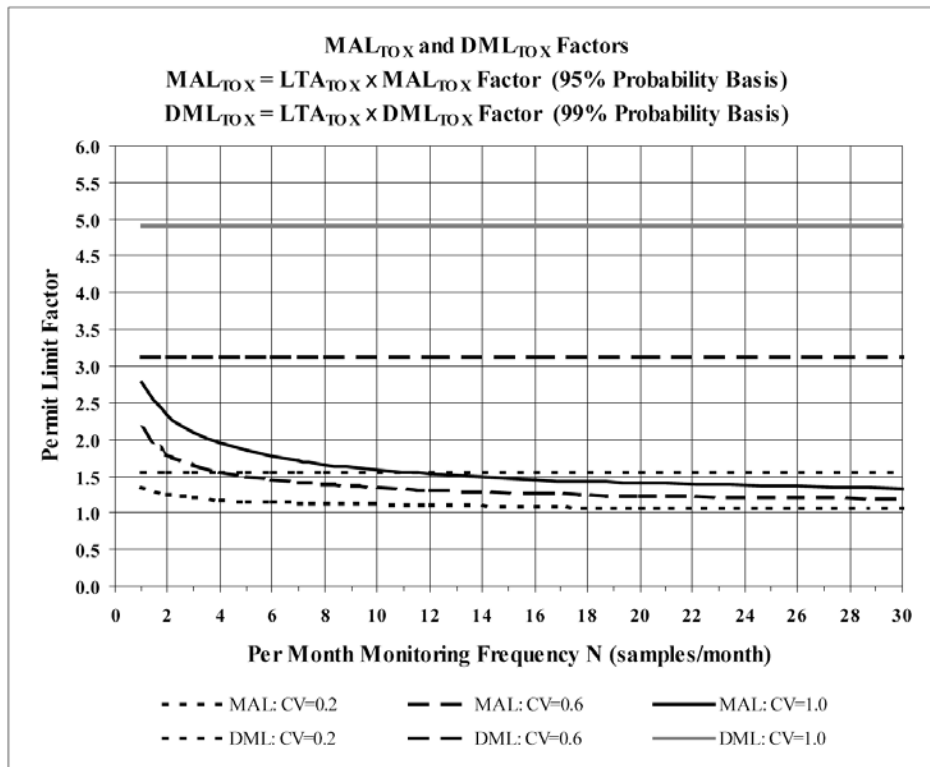


Figure F-2. Toxicity-Based MAL and DML Permit Limit Factors vs. Per Month Monitoring Frequency N_m

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APPENDIX G. EQUATIONS FOR IMPLEMENTATION OF NUMERICAL HUMAN HEALTH AND RAW WATER CRITERIA TO PROTECT THE FISH CONSUMPTION AND PUBLIC AND PRIVATE WATER SUPPLY BENEFICIAL USES [REVOKED]

APPENDIX G. EQUATIONS FOR IMPLEMENTATION OF NUMERICAL HUMAN HEALTH AND RAW WATER CRITERIA TO PROTECT THE FISH CONSUMPTION AND PUBLIC AND PRIVATE WATER SUPPLY BENEFICIAL USES [NEW]

(1) **General.** Human health numerical criteria (for consumption of fish flesh and consumption of fish flesh and water) and raw water column criteria are implemented according to OAC 252:740 and OAC 252:690-3-64 through 3-77. Wasteload allocation, criterion long term average and permit limit development equations are described in this appendix.

(2) **Reasonable potential.**
See OAC 252:740.

(3) **WLA_{FF}, WLA_{FFW} and WLA_{RAW}.**

$$WLA_{FF} = C_{FF} + \frac{(C_{FF} - C_B)}{Q^*} \quad [G-1]$$

$$WLA_{FFW} = C_{FFW} + \frac{(C_{FFW} - C_B)}{Q^*} \quad [G-2]$$

$$WLA_{RAW} = C_{RAW} + \frac{(C_{RAW} - C_B)}{Q^*} \quad [G-3]$$

(4) **LTA_{FF}, LTA_{FFW} and LTA_{RAW}.**

$$LTA_{FF} = WLA_{FF} \quad [G-4]$$

$$LTA_{FFW} = WLA_{FFW} \quad [G-5]$$

$$LTA_{RAW} = WLA_{RAW} \quad [G-6]$$

(5) **Permit Limitations.** MALs and DMLs are calculated for the human health/fish flesh, human health/fish flesh and water, and raw water column criteria according to the following equations, where "HH" is used as the common descriptor for all three criteria.

(A) **MAL_{HH}.**

$$MAL_{HH} = LTA_{HH} \quad [G-7]$$

(B) DML_{HH} (99% probability basis).

$$DML_{HH} = LTA_{HH} \times \text{EXP} \left(\frac{2.326 \sqrt{\ln(1+CV^2)} - 0.5 \ln(1+CV^2)}{1.645 \sqrt{\ln\left(1 + \frac{CV^2}{N_m}\right)} - 0.5 \ln\left(1 + \frac{CV^2}{N_m}\right)} \right) \quad [G-8]$$

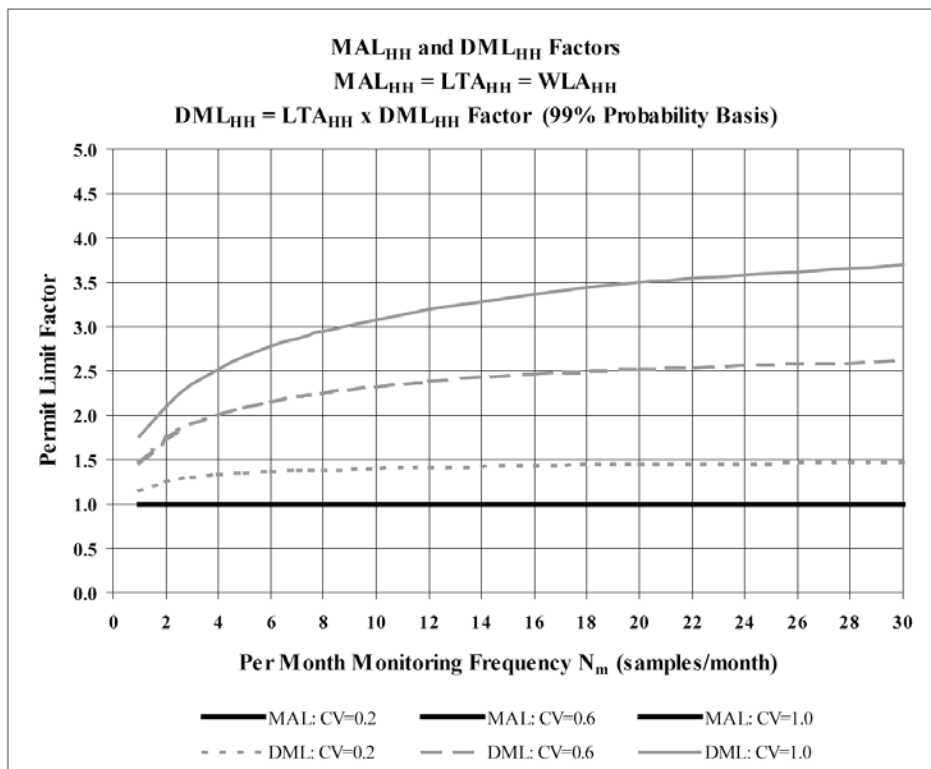


Figure G-1. Human Health-Based MAL and DML Permit Limit Factors vs. Per Month Monitoring Frequency N_m

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APPENDIX H. EQUATIONS FOR IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE [REVOKED]

APPENDIX H. EQUATIONS FOR IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE [NEW]

(1) **General.** Agriculture use YMS and SS numerical criteria are implemented according to OAC 252:740 and OAC 252:690-3-79 through 3-85. Wasteload allocation, criterion long term average and permit limit development equations are described in this appendix.

(2) **Reasonable potential.**
See OAC 252:740.

(3) **WLA_{YMS} and WLA_{SS}.**

$$WLA_{YMS} = C_{YMS} + \frac{(C_{YMS} - C_B)}{Q^*} \quad [H-1]$$

$$WLA_{SS} = C_{SS} + \frac{(C_{SS} - C_B)}{Q^*} \quad [H-2]$$

(4) **LTA_{YMS} and LTA_{SS} for mineral constituents**

$$LTA_{YMS} = WLA_{YMS} \quad [H-3]$$

$$LTA_{SS} = WLA_{SS} \times \text{EXP} \left(0.5 \ln \left(1 + \frac{CV^2}{4} \right) - 2.326 \sqrt{\ln \left(1 + \frac{CV^2}{4} \right)} \right) \quad [H-4]$$

(5) **LTA_{CL}, LTA_{SO4}, and LTA_{TDS}.**

$$LTA_{CL} = \text{MIN}(LTA_{YMS}, LTA_{SS}) \text{ for chlorides.} \quad [H-5]$$

$$LTA_{SO4} = \text{MIN}(LTA_{YMS}, LTA_{SS}) \text{ for sulfates.} \quad [H-6]$$

$$LTA_{TDS} = \text{MIN}(LTA_{YMS}, LTA_{SS}) \text{ for total dissolved solids.} \quad [H-7]$$

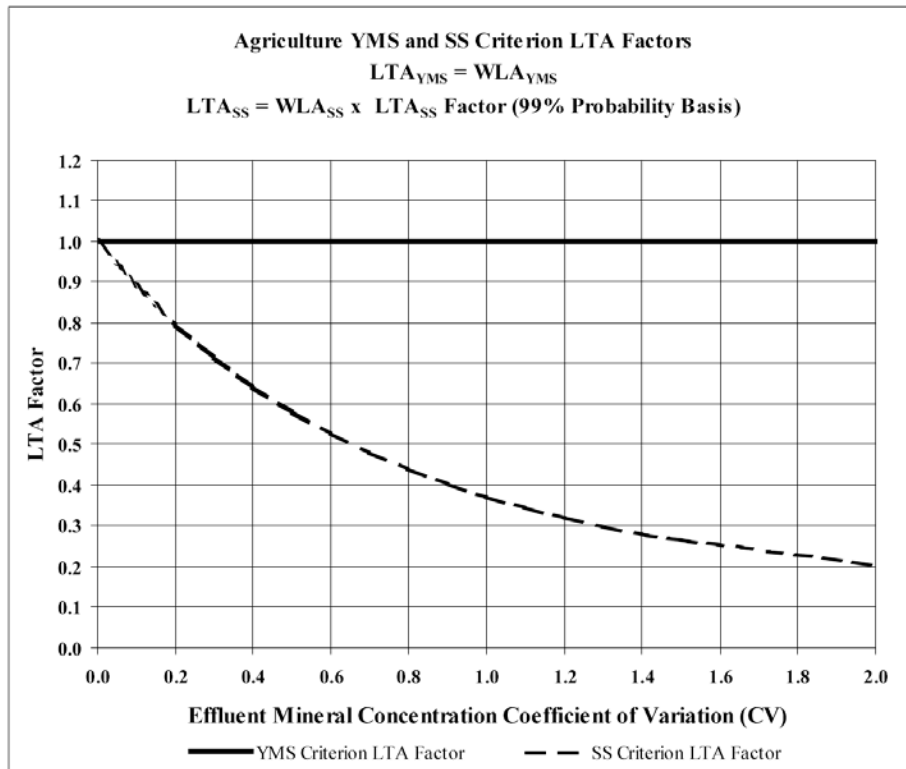


Figure H-1. Agriculture Criteria LTA Factors vs. Effluent Coefficient of Variation

(6) **Permit Limitations.** The more stringent of the YMS and SS LTAs for each mineral constituent is used to develop water quality-based permit limitations for that substance. OAC 252:730 requires that the long term average mineral constituent concentrations used to develop permit limitations be not less than 700 mg/l for TDS and not less than 250 mg/l for chlorides and sulfates. The following permit limit development equations account for this minimum LTA requirement.

(A) **MAL_{CL}, MAL_{SO4}, and MAL_{TDS} (95% probability basis).**

$$MAL_{CL} = \text{MAX}(250, LTA_{CL}) \times \text{EXP} \left(1.645 \sqrt{\ln \left(1 + \frac{CV^2}{N_m} \right)} - 0.5 \ln \left(1 + \frac{CV^2}{N_m} \right) \right) \quad [H-8]$$

$$MAL_{SO4} = \text{MAX}(250, LTA_{SO4}) \times \text{EXP} \left(1.645 \sqrt{\ln \left(1 + \frac{CV^2}{N_m} \right)} - 0.5 \ln \left(1 + \frac{CV^2}{N_m} \right) \right) \quad [H-9]$$

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$$MAL_{TDS} = \text{MAX}(700, LTA_{TDS}) \times \text{EXP} \left(1.645 \sqrt{\ln \left(1 + \frac{CV^2}{N_m} \right)} - 0.5 \ln \left(1 + \frac{CV^2}{N_m} \right) \right) \quad [H-10]$$

(B) **DML_{CL}, DML_{SO4}, and DML_{TDS} (95% probability basis).**

$$DML_{CL} = \text{MAX}(250, LTA_{CL}) \times \text{EXP} \left(1.645 \sqrt{\ln(1 + CV^2)} - 0.5 \ln(1 + CV^2) \right) \quad [H-11]$$

$$DML_{SO4} = \text{MAX}(250, LTA_{SO4}) \times \text{EXP} \left(1.645 \sqrt{\ln(1 + CV^2)} - 0.5 \ln(1 + CV^2) \right) \quad [H-12]$$

$$DML_{TDS} = \text{MAX}(700, LTA_{TDS}) \times \text{EXP} \left(1.645 \sqrt{\ln(1 + CV^2)} - 0.5 \ln(1 + CV^2) \right) \quad [H-13]$$

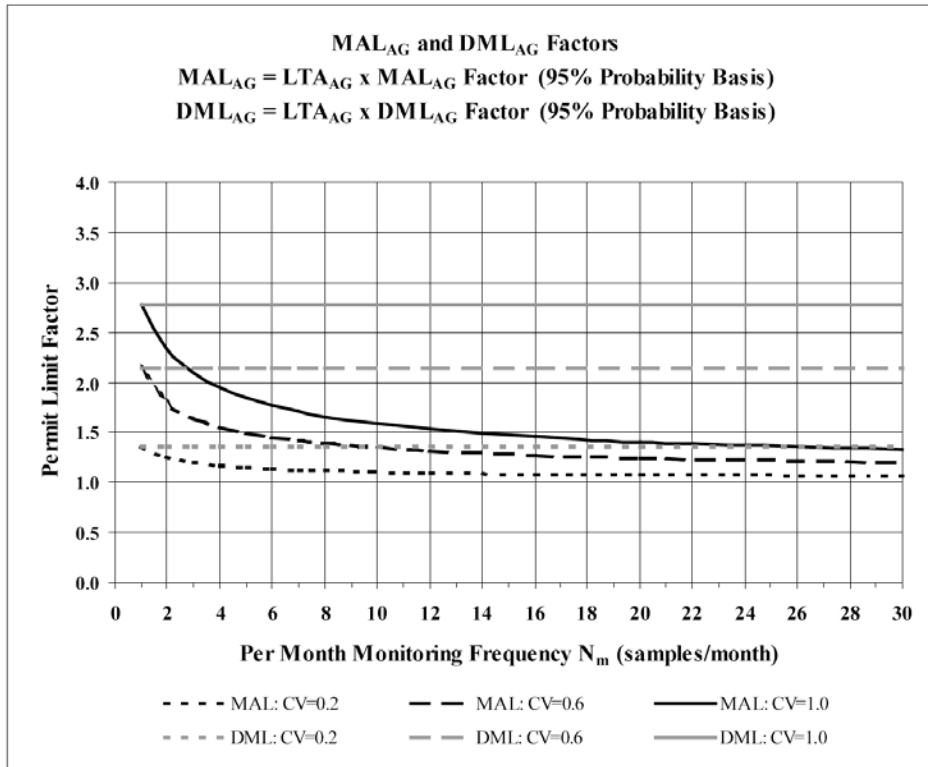


Figure H-2. Agriculture MAL and DML Permit Limit Factors vs. Per Month Monitoring Frequency N_m

APPENDIX I. PERFORMANCE-BASED EFFLUENT MONITORING FREQUENCY REDUCTIONS AND INCREASES [REVOKED]

APPENDIX I. PERFORMANCE-BASED EFFLUENT MONITORING FREQUENCY REDUCTIONS AND INCREASES [NEW]

If a permit contains a monthly average mass loading limit, but not a monthly average concentration limit, the equivalent monthly average concentration limit may be derived from the monthly average mass loading limit and the flow basis (the high 30-day average flow during the previous permit cycle for industrial facilities and the design flow for municipal facilities).

**Table I-1. Performance Based Monitoring Frequency Reductions
(No Permit Violations During The Previous Permit Cycle)***

Baseline Monitoring Frequency (previous permit cycle)	Ratio (Percent) of Long-term Average Effluent Concentration for The Previous Permit Cycle to Monthly Average Concentration Limit ^a				
	< 25%	≥25% and <50%	≥50% and <65%	≥65% and <75%	≥75%
7/week (daily)	2/week	3/week	4/week	5/week	6/week
6/week	2/week	3/week	3/week	4/week	5/week
5/week	1/week	2/week	3/week	4/week	4/week
4/week	1/week	2/week	2/week	3/week	NR
3/week	1/week	2/week	2/week	NR	NR
2/week	2/month	1/week	1/week	NR	NR
1/week	1/month	2/month	NR	NR	NR
2/month	1/month	NR	NR	NR	NR
1/month	NR	NR	NR	NR	NR
1/2 months	NR	NR	NR	NR	NR

^a NR means "no reduction."

* The frequency reductions stated in Table I-2 do not affect the need to conduct control tests and do not affect the number of control tests to be conducted. See OAC 252:690-3-91.

Table I-2. Monitoring Frequency Increases

Baseline Monitoring Frequency (previous permit cycle)	Increased Monitoring Frequency for parameters demonstrating a violation during the previous permit cycle ^a
7/week (daily)	NI
6/week	7/week
5/week	7/week
4/week	6/week
3/week	5/week
2/week	4/week
1/week	3/week
2/month	2/week
1/month	1/week
1/2 months (every other month)	2/month
1/3 months (once per quarter)	1/month
1/6 months (semi-annually)	1/month
1/year	1/month

^a NI means "no increase"

[OAR Docket #22-779; filed 10-27-22]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 730. OKLAHOMA WATER QUALITY STANDARDS**

[OAR Docket #22-780]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions [NEW]
 - 252:730-1-1 [NEW]
 - 252:730-1-2 [NEW]
 - 252:730-1-3 [NEW]
 - 252:730-1-4 [NEW]
 - 252:730-1-5 [NEW]
 - 252:730-1-6 [NEW]
- Subchapter 3. Antidegradation Requirements [NEW]
 - 252:730-3-1 [NEW]
 - 252:730-3-2 [NEW]
- Subchapter 5. Surface Water Quality Standards [NEW]
 - Part 1. General Provisions [NEW]
 - 252:730-5-1 [NEW]
 - 252:730-5-2 [NEW]
 - 252:730-5-3 [NEW]
 - 252:730-5-4 [NEW]
 - 252:730-5-5 [NEW]
 - 252:730-5-6 [NEW]
 - 252:730-5-7 [NEW]
 - Part 3. Beneficial Uses and Criteria to Protect Uses [NEW]
 - 252:730-5-8 [RESERVE]
 - 252:730-5-9 [NEW]
 - 252:730-5-10 [NEW]
 - 252:730-5-11 [NEW]
 - 252:730-5-12 [NEW]
 - 252:730-5-13 [NEW]
 - 252:730-5-14 [RESERVE]
 - 252:730-5-15 [RESERVE]
 - 252:730-5-16 [NEW]
 - 252:730-5-17 [NEW]
 - 252:730-5-18 [NEW]
 - 252:730-5-19 [NEW]
 - 252:730-5-20 [NEW]
 - Part 5. Special Provisions [NEW]
 - 252:730-5-21 [RESERVE]
 - 252:730-5-22 [RESERVE]
 - 252:730-5-23 [RESERVE]
 - 252:730-5-24 [RESERVE]
 - 252:730-5-25 [NEW]
 - 252:730-5-26 [NEW]
 - 252:730-5-27 [RESERVE]
 - 252:730-5-28 [RESERVE]
 - 252:730-5-29 [NEW]
- Subchapter 7. Groundwater Quality Standards [NEW]
 - 252:730-7-1 [NEW]
 - 252:730-7-2 [NEW]
 - 252:730-7-3 [NEW]
 - 252:730-7-4 [NEW]
 - 252:730-7-5 [NEW]
- Appendix A. Designated Beneficial Uses of Surface Waters [NEW]
- Appendix B. Areas with Waters of Recreational and/or Ecological Significance [NEW]
- Appendix C. [RESERVED]
- Appendix D. Classifications for Groundwater in Oklahoma [NEW]
- Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]
- Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except as Indicated) [NEW]
- Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]
- Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]

Appendix I. Criteria for Groundwater Protection [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203. Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorizes DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

CONTACT PERSON:

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DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER QUALITY DIVISION, 707 NORTH ROBINSON AVE, OKLAHOMA CITY, OKLAHOMA 73101-1677, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

CHAPTER 730. OKLAHOMA'S WATER QUALITY STANDARDS

Oklahoma Administrative Code (OAC) 252:730 is adopted to transfer authority for administering the Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) at OAC 785:45 to the Oklahoma Department of Environmental Quality (DEQ) and to authorize DEQ to issue Water Quality Standards Variances as provided by Senate Bill No. 1325 and House Bill No. 3824. The text of OAC 252:730 reflects the text of OAC 785:45 and has been updated to change references from OAC 785:45 and

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OAC 785:46 to OAC 252:730 and OAC 252:740. References to OWRB have also been changed to DEQ.

Subchapter 1. General Provisions

OAC 252:730-1-1. Purpose

OAC 252:730-1-1 provides that DEQ has the authority for administering the OWQS and provides the OWQS are intended to promote and protect beneficial uses as are attainable and to assure the degradation of existing quality of waters of the State does not occur.

OAC 252:730-1-2. Definitions

OAC 252:730-1-2 provides the definitions for certain words and terms used in OAC 252:730.

OAC 252:730-1-3. Adoption and Enforceability of the Standards

OAC 252:730-1-3 concerns the adoption of the OWQS by DEQ and their enforceability under the laws of Oklahoma.

OAC 252:730-1-4. Testing Procedures

OAC 730-1-4 provide that certain testing procedures used for the OWQS shall be in accordance with 40 C.F.R. Part 136.

OAC 252:730-1-5. Revision Procedures

OAC 252:730-1-5 specifies the applicable revision procedures for the OWQS.

OAC 252:730-1-6. Errors and Separability

OAC 252:730-1-6 concerns how errors of the OWQS are corrected and that a determination that a provision of the OWQS as invalid does not render the remaining provisions invalid.

Subchapter 3. Antidegradation Requirements

OAC 252:730-3-1. Purpose; Antidegradation Policy Statement

OAC 252:730-3-1 establishes that the purpose of the OWQS is to protect the waters of the State for the benefit of the citizens and states the antidegradation policy for the OWQS.

OAC 252:730-3-2. Applications of Antidegradation Policy

OAC 252:730-3-2 concerns the application of the antidegradation policy for Outstanding Resource Waters, High Quality Waters, Sensitive and Private Supplies, beneficial uses, and improved waters.

Subchapter 5. Surface Water Quality Standards

Part I. General Provisions

OAC 252:730-5-1. Declaration of Policy; Authority of Board

OAC 252:730-5-1 provides the purpose of the OWQS is to protect, maintain, and improve the water quality for waters of the State. It further provides DEQ has the authority to promulgate the OWQS.

OAC 252:730-5-2. Beneficial Uses; Existing and Designated

OAC 252:730-5-2 concerns beneficial uses of the waters of the State, both existing and designated.

OAC 252:730-5-3. Beneficial Uses; Default Designations

OAC 252:730-5-3 concerns the default designation of certain beneficial uses of the waters of the State, including surface waters excluding lakes and lakes.

OAC 252:730-5-4. Applicability of narrative and numerical criteria

OAC 252:730-5-4 addresses the applicability of narrative and numerical criteria for the OWQS.

OAC 252:730-5-5. Water Quality Standard Variance

OAC 252:730-5-5 addresses water quality standard variances under this Chapter.

OAC 252:730-5-6. Compliance Schedules

OAC 252:730-6 addresses the use of compliance schedules for the OWQS.

OAC 252:730-5-7. Site-specific Criteria

OAC 252:730-7 addresses site-specific criteria for the OWQS.

Part 3. Beneficial Uses and Criteria to Protect Uses

OAC 252:730-5-9. General Narrative Criteria

OAC 252:730-5-9 addresses the general narrative criteria for certain waters of the State for the OWQS.

OAC 252:730-5-10. Public and Private Water Supplies

OAC 252:730-10 governs the applicability of certain criteria for surface waters of the State with the designated beneficial use of Public and Private Water Supplies for the OWQS.

OAC 252:730-5-11. Emergency and Private Water Supplies

OAC 252:730-5-11 concerns the emergency use of waters designated as Emergency and Private Water Supplies for OWQS.

OAC 252:730-5-12. Fish and Wildlife Propagation

OAC 252:730-5-12 concerns the propagation of fish and wildlife in relation to the OWQS.

OAC 252:730-5-13. Agriculture

OAC 252:730-5-13 concerns the OWQS and agriculture.

OAC 252:730-5-16. Primary Body Contact Recreation

OAC 252:730-5-16 addresses the OWQS and Primary Body Contact Recreation.

OAC 252:730-5-17. Secondary Body Contact Recreation

OAC 252:730-5-16 addresses the OWQS and Secondary Body Contact Recreation.

OAC 252:730-5-18. Navigation

OAC 252:730-5-18 addresses navigation as a beneficial use of the waters of the State under the OWQS.

OAC 252:730-5-19. Aesthetics

OAC 252:730-19 concerns aesthetics in connection with the OWQS.

OAC 252:730-5-20. Fish Consumption

OAC 252:730-5-20 concerns fish consumption and the OWQS.

Part 5. Special Provisions

OAC 252:730-5-25. Implementation Policies for the Antidegradation Policy Statement

OAC 730-5-25 concerns the implementation policies for the antidegradation policy statement and the OWQS.

OAC 252:730-5-26. Mixing Zones and Zones of Passage

OAC 730-5-26 concerns mixing zones and zones of passage for the OWQS.

OAC 252:730-5-29. Delineation of NLW Areas.

OAC 730-5-29 concerns the delineation of NLW areas for the OWQS.

Subchapter 7. Groundwater Water Quality Standards

OAC 252:730-7-1. Scope and Applicability; Purpose

OAC 730-7-1 addresses the scope and applicability of OWQS for fresh groundwater as well as covers the purpose of Subchapter 7.

OAC 252:730-7-2 Groundwater Quality Antidegradation Policy

OAC 730-7-1 addresses the antidegradation policy for groundwaters for the State under the OWQS.

OAC 252:730-7-3. Groundwater Classifications, beneficial uses and vulnerability levels

OAC 730-7-3 concerns the various classifications, beneficial uses, and vulnerability levels for the groundwaters of the State under the OWQS.

OAC 252:730-7-4. Criteria for groundwater quality protection

OAC 730-7-4 governs the criteria groundwater quality protection under the OWQS.

OAC 252:730-7-5 Corrective Action

OAC 730-7-5 addresses corrective actions for groundwaters of the State under the OWQS.

Appendix A. Designated Beneficial Uses of Surface Waters

Appendix A concerns the designated beneficial uses for certain waterbodies in the State under the OWQS and includes several applicable tables.

Appendix B. Areas with Waters of Recreational and/or Ecological Significance

Appendix B includes tables that list national and state parks, national forests, wildlife forests, wildlife areas, wildlife management areas, wildlife refuges, and areas that contain federally listed threatened or endangered species under the Federal Species Act.

Appendix D. Classifications for Groundwater in Oklahoma

Appendix D concerns the classifications of groundwater in the State and includes applicable tables.

Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters

Appendix E concerns provisions for the requirements for the development of site-specific criteria for certain parameters.

Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except as Indicated)

Appendix F concerns certain statistical values of the historical data for mineral constituents of water quality beginning in October 1976 and ending September 1983, except as indicated, and includes applicable tables.

Appendix G. Numerical Criteria to Protect Beneficial Uses

Appendix G concerns provisions for numerical criteria to protect beneficial uses and includes applicable tables.

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

Appendix H concerns provisions for the beneficial use designations for certain limited areas of groundwater and includes applicable tables.

Appendix I. Criteria for Groundwater Protection Appendix I includes tables related to criteria for protection of groundwater

FULL TEXT OF THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER QUALITY DIVISION, 707 NORTH ROBINSON AVE,

OKLAHOMA CITY, OKLAHOMA 73101-1677 AND AT WWW.DEQ.OK.GOV/WP-CONTENT/UPLOADS/DEQMAIN RESOURCES/730-PREAMBLE-TEXT-EMERGENCY_FINAL.PDF, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES.

[OAR Docket #22-780; filed 10-27-22]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 740. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #22-781]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions [NEW] 252:740-1-1 [NEW] 252:740-1-2 [NEW] 252:740-1-3 [NEW] 252:740-1-4 [NEW] 252:740-1-5 [NEW] 252:740-1-6 [NEW] Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing [NEW] 252:740-3-1 [NEW] 252:740-3-2 [NEW] 252:740-3-3 [NEW] 252:740-3-4 [NEW] 252:740-3-5 [NEW] Subchapter 5. Implementation of Numerical Criteria to Protect Fish and Wildlife from Toxicity Due to Conservative Substances [NEW] 252:740-5-1 [NEW] 252:740-5-2 [NEW] 252:740-5-3 [NEW] 252:740-5-4 [NEW] Subchapter 7. Implementation of Numerical Criteria to Protect Human Health Form Toxicity Due to Conservative Substances [NEW] 252:740-7-1 [NEW] 252:740-7-2 [NEW] 252:740-7-3 [NEW] Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use [NEW] 252:740-9-1 [NEW] 252:740-9-2 [NEW] 252:740-9-3 [NEW] 252:740-9-4 [NEW] Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation [NEW] 252:740-11-1 [NEW] 252:740-11-2 [NEW] 252:740-11-3 [NEW] 252:740-11-4 [NEW] 252:740-11-5 [NEW] Subchapter 13. Implementation of Antidegradation Policy [NEW] 252:740-13-1 [NEW] 252:740-13-2 [NEW] 252:740-13-3 [NEW] 252:740-13-4 [NEW] 252:740-13-5 [NEW] 252:740-13-6 [NEW] 252:740-13-7 [NEW] 252:740-13-8 [NEW] Subchapter 15. Use Support Assessment Protocols [NEW] 252:740-15-1 [NEW] 252:740-15-2 [NEW]

- 252:740-15-3 [NEW] 252:740-15-4 [NEW] 252:740-15-5 [NEW] 252:740-15-6 [NEW] 252:740-15-7 [NEW] 252:740-15-8 [NEW] 252:740-15-9 [NEW] 252:740-15-10 [NEW] 252:740-15-11 [NEW] 252:740-15-12 [NEW] Subchapter 17. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation [NEW] 252:740-17-1 [NEW] 252:740-17-2 [NEW] 252:740-17-3 [NEW] Appendix A. [RESERVED] Appendix B. Mean Hardness (CaCO3) and pH by Stream Segment [NEW] Appendix C. Index of Biological Integrity [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-6-103, and 2-6-203. Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval.

APPROVED BY GOVERNOR:

October 25, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

During the 2022 Oklahoma Legislative session, Senate Bill No. 1325 and House Bill No. 3824 were passed by the Legislature and signed by the Governor. These bills transfer authority for administering Oklahoma Water Quality Standards (OWQS) from the Oklahoma Water Resources Board (OWRB) to the Department of Environmental Quality (DEQ) and specifically authorizes DEQ to issue Water Quality Standards Variances. The effective date of the legislation is November 1, 2022. It is necessary that DEQ promulgate two new rules, OAC 252:730 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 252:740 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS, to replace OWRB's rules OAC 785:45 - OKLAHOMA'S WATER QUALITY STANDARDS and OAC 785:46 - IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS. DEQ has deemed that this emergency rule is necessary as an emergency measure to protect public health, safety, and welfare in order to comply with the statutory changes that take effect November 1, 2022. These rules must be approved by the Environmental Quality Board, signed by the Governor, and be in effect on November 1, 2022. A failure to promulgate these emergency rules may result in permit issuance delays and the application of federal Water Quality Standards in the State of Oklahoma. Furthermore, it is necessary that existing rules that reference OAC 785:45, OAC 785:46, or OWRB's authority for administering OWQS, be amended to reference OAC 252:730, OAC 252:740, and DEQ, respectively.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is due to the Legislature passing and the Governor signing Senate Bill No. 1325 and House Bill No. 3824 which transfers authority for administering Oklahoma Water Quality Standards (OWQS) from the OWRB to the DEQ and specifically allows for DEQ to issue a Water Quality Standard Variance. Changes include updating references to OAC 785:45, OAC 785:46 and Oklahoma Water Resources Board (OWRB), and replacing these references with OAC 252:730, OAC 252:740, and Department of Environmental Quality (DEQ), respectively, and where applicable. OAC 252:730 and OAC 252:740 are new emergency rules being promulgated due to the legislation referenced above.

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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 1. GENERAL PROVISIONS

252:740-1-1. Purpose, scope and applicability

(a) According to 82 O.S., §1085.30, the Oklahoma Department of Environmental Quality is authorized to promulgate rules to be known as "Oklahoma Water Quality Standards" which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters. [82 O.S. § 1085.30(A)]. The "Oklahoma Water Quality Standards" are codified at OAC 252:730. Section 1085.30 of Title 82 O.S. also provides for the Oklahoma Department of Environmental Quality to adopt and promulgate accompanying rules to implement the Oklahoma Water Quality Standards. Such implementation rules are set forth in OAC 252:740 and shall be enforced by all state agencies within the scope of their jurisdiction. Implementation rules promulgated by other state environmental agencies shall not be inconsistent with the implementation rules in OAC 252:740.

(b) If an affected person can demonstrate to the satisfaction of the permitting authority that scientific methods, data, or implementation procedures different than those specified in this Chapter will achieve a more appropriate or representative implementation of the Standards, then the permitting authority shall use or apply such methods, data, or procedures to implement the Standards. In those circumstances where the permitting authority does not agree that the affected person's proposed scientific methods, data, or implementation will result in a more appropriate or representative implementation of the Standards, the affected person may request a review of the proposed scientific methods, data, or implementation by the agency responsible for Standards implementation who shall determine its appropriateness.

(c) Implementation rules promulgated in this Chapter by DEQ and promulgated elsewhere by other state environmental agencies with authority for implementation provide a bridge between water quality standards in OAC 252:730 and water quality management. For example, water quality standards contain numerical criteria to protect aquatic life. Permits incorporating these criteria must be issued to limit effluent concentrations so that the criteria are not violated outside the mixing zone. In this case the implementation rules describe how the criteria are translated into permit limits.

252:740-1-2. Definitions

In addition to definitions of terms found in OAC 252:730-1-2, which are incorporated herein by reference, the following words, terms and notations, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"7T2" means the seven-day maximum temperature likely to occur with a 50% probability each year. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m , is calculated based on the number of years of record, n , with a recurrence interval of 2 years, as $m = (n+1)/2$. The m^{th} highest average temperature is the 7T2.

"A" means mean annual average flow.

"ACR" means acute to chronic ratio.

"Acute to chronic ratio" means LC50/NOEC. The NOEC is the highest concentration at which no effect on test organisms is observed over a relatively long period. Quarterly biomonitoring over the life of the permit is sufficient to determine the ACR if the NOEC and LC50 may be determined. If the ACR is unknown, a default value of 10 may be used for implementation purposes.

"Background" means the ambient condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

"Beneficial use limitation" means a more stringent restriction than that required to protect the beneficial use. A prohibition on new point sources is an example of a beneficial use limitation.

"Board" means the Environmental Quality Board.

"BOD" means biochemical oxygen demand.

"C" means maximum concentration on the mixing zone boundary.

"C₉₅" means the 95th percentile maximum likelihood concentration.

"C_b" means background concentration.

"C_e" means effluent concentration.

"cfs" means cubic feet per second.

"C_{mean}" means the geometric mean of all effluent concentrations analyzed for the toxicant.

"C_t" means the appropriate criterion listed in OAC 252:730.

"CBOD" means carbonaceous biochemical oxygen demand.

"Coefficient of variation" means standard deviation divided by the mean.

"Continuing Planning Process (CPP)" means the most recent edition of the document produced annually by the Oklahoma Department of Environmental Quality which describes water quality programs implemented within the State.

"Continuing toxicity" means a tendency to be toxic.

"Control" means test organisms exposed to 0% effluent as part of the whole effluent toxicity testing procedure.

"Cooling water reservoir" means a privately owned reservoir used in the process of cooling water for industrial purposes.

"CPP" means the Continuing Planning Process document.

"CV" means coefficient of variation.

"D" means diameter of the discharge pipe in feet.

"df" means dilution factor.

"Dilution capacity" means a measure of the ability of the receiving stream to dilute effluent, defined as the ratio of the regulatory effluent flow to the regulatory receiving stream flow.

"Dilution factor" means a measure of the minimum dilution that occurs on the mixing zone boundary.

"DO" means dissolved oxygen.

"Drainage area" means the area above the discharge drained by the receiving stream.

"Event mean concentration" means the flow-weighted average for a given storm event. The flow-weighted average is represented as the sum of the loads calculated for a series of storm samples divided by the sum of the discharges calculated for each of the storm samples.

"EPA" means the United States Environmental Protection Agency.

"HOW" means high quality waters as defined in OAC 252:730-3-2(b).

"Implementation Plan" means a Water Quality Standards Implementation Plan developed and promulgated by a state environmental agency as required by 27A O.S. § 1-1-202.

"Increased load" means the mass of pollutant discharged which is greater than the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the SWS, SWS-R, HOW, or ORW beneficial use limitation was assigned.

"Lake mixing zone" means a volume extending one hundred feet from the source for implementation purposes, unless otherwise specified in OAC 252:730.

"LC50" means the lethal concentration as defined in OAC 252:730-1-2.

"LMFO" means licensed managed feeding operation as defined in 2 O.S. 9-202.

"Mean annual average flow" means the annual mean flow found in "Statistical Summaries", USGS publication no. 87-4205, or most recent version thereof, or other annual mean flow as approved by the Oklahoma Water Resources Board or the permitting authority.

"Monthly average level" means the concentration of a toxicant in the permit which may not be exceeded by the observed effluent concentration averaged over a calendar month.

"Naturally occurring condition" means any condition affecting water quality which is not caused by human influence, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations.

"NLW" means nutrient-limited watershed as defined in OAC 252:730-1-2.

"NOEC" means no observed effect concentration.

"NPDES" means National Pollutant Discharge Elimination System.

"Normal pool elevation" means the elevations listed in the "Oklahoma Water Atlas", Oklahoma Water Resources Board publication no. 135, or most recent version thereof.

"ORW" means Outstanding Resource Waters as defined in OAC 252:730-3-2(a).

"Outfall" means a point source which contains all the effluent being discharged to the receiving water.

"OWQS" means Oklahoma Water Quality Standards.

"Permitting authority" means state environmental agency as defined or provided in Title 27A of the Oklahoma Statutes having jurisdiction as provided by law.

"Persistent toxicity" means toxicity due to effluent constituents which are not subject to decay, degradation, transformation, volatilization, hydrolysis, or photolysis.

"Q*" means dilution capacity.

"Q_e" means the regulatory effluent flow.

"Q_{gl}" means long term average effluent flow.

"Q_{es}" means short term average effluent flow.

"Q_u" means the regulatory receiving stream flow.

"Regulatory mixing zone" means the volume of receiving water described in 252:730-5-26.

"Reasonable potential factor" means the 95th percentile maximum likelihood estimator for a lognormal distribution.

"SS" means sample standard as defined in OAC 252:730-1-2.

"Storm event" means precipitation, after a minimum of 72 hours has elapsed since cessation of previous precipitation, in the watershed of a stream segment that produces a 30 percent rise in stream flow over the average flow of the preceding 72 hours resulting from surface run-off.

"SWS" means Sensitive Public and Private Water Supplies.

"SWS-R" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed municipal water for the purpose of indirect potable reuse.

"T" means maximum temperature difference at the edge of the mixing zone boundary.

"T_a" means regulatory ambient temperature.

"T_c" means the temperature criterion.

"T_f" means the 95th percentile maximum observed effluent temperature.

"TDS" means total dissolved solids at 180C.

"TMDL" means total maximum daily load.

"Total maximum daily load" means the sum of individual wasteload allocations for point sources, safety reserves, and loads from nonpoint source and natural backgrounds.

"Trophic State Index" means a numerical quantification of lake productivity. The Trophic State Index shall be determined by $TSI = 9.81 \times \ln(\text{chlorophyll-a}) + 30.6$.

"TSI" means Trophic State Index.

"TSS" means total suspended solids.

"USGS" means United States Geological Survey.

"W" means canal width in feet.

"YMS" means yearly mean standard as defined in OAC 252:730-1-2.

252:740-1-3. Procedural and substantive authority

The rules in OAC 252:740 provide for implementation of the "Oklahoma Water Quality Standards". The rules in this Chapter are promulgated as rules by DEQ pursuant to the procedures specified in the Oklahoma Administrative Procedures Act, 75 O.S. Section 250 et. seq., and pursuant to the substantive law provided in 82 O.S. Section 1085.30.

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252:740-1-4. Testing procedures

All methods of sample collection, preservation, and analysis used in implementing OAC 252:730 shall be in accordance with "The Guidelines Establishing Test Procedures for the Analysis of Pollutants" as provided by 40 C.F.R. Part 136, or other procedures approved by the Oklahoma Laboratory Accreditation Program of the Oklahoma Department of Environmental Quality or practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with 252:740-15-3(e) and (g).

252:740-1-5. Errors and separability

(a) Any errors in OAC 252:740 resulting from inadequate and erroneous data or human or clerical oversight will be subject to correction by DEQ. Discovery of any such errors does not render the remaining and unaffected implementation rules in OAC 252:740 invalid.

(b) If any implementation rule in OAC 252:740 is held to be invalid, the application of such rule to other circumstances and the remainder of OAC 252:740 shall not be affected thereby.

252:740-1-6. Determination of regulatory low flow

(a) General.

(1) **7Q2.** The 7Q2 is calculated as a moving average of seven consecutive days for each year in a given record. These seven-day low flow values are ranked in ascending order. An order number (m) is calculated based upon the number of years of record (n), with a recurrence interval (R) of two years, as $m = (n+1)/R$, where R = two years. A value of flow corresponding to the mth order is taken as the seven-day, two-year low flow for those historical data.

(2) **Seasonal 7Q2.** The seasonal 7Q2 is calculated as a moving average of seven consecutive days for the applicable dates specified in Table 1 of Appendix G of OAC 252:730 in a given period of record. These seven-day low flow values are ranked in ascending order. An order number (m) is calculated based upon the number of seasons (n) specified in Table 1 of OAC 252:730 Appendix G during the period of record, with a recurrence interval (R) of two years, as $m = (n+1)/R$, where R = two years. A value of flow corresponding to the mth order is taken as the seasonal seven-day, two-year low flow for those historical data.

(b) **Primary method for determination.** If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is determinable from the United States Geological Survey publication entitled "Statistical Summaries of Streamflow in and near Oklahoma Through 2007" or the latest version of the Water Quality Management Plan published by the Department of Environmental Quality, then that 7Q2 and seasonal 7Q2 shall be conclusive except as provided otherwise in this section.

(c) Alternative methods for determination of 7Q2 or seasonal 7Q2.

(1) In lieu of determining the 7Q2 or seasonal 7Q2 as provided in (b) of this Section, the 7Q2 for a given stream or stream segment may be determined by an affected person or the permitting authority if all of the following conditions are satisfied:

(A) A hydrological modification affecting the flow in the stream is documented to the satisfaction of DEQ and the permitting authority;

(B) At least 10 years of daily flow data comporting with the requirements of this section are available; and

(C) Data from the entire period of record for the stream, unless a different time frame of record is approved by the Board and the permitting authority, are used in the calculation.

(2) If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is not determinable as provided in (b) or (c)(1) of this Section or if additional daily flow data have been collected, then the 7Q2 or seasonal 7Q2 for that stream or stream segment may be determined by an affected person or the permitting authority using the calculations provided in (a) of this Section, provided at least 10 years of daily flow data are available for that stream.

(3) If the flow is affected by contributions from gaged tributaries or other permitted discharges, then the 7Q2 or seasonal 7Q2 for a given stream or stream segment may be determined taking those contributions at 7Q2 or seasonal 7Q2, or both, into account on a case-by-case basis if approved by either DEQ or the permitting authority.

(4) If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is not determinable as provided in (b), (c)(1), (c)(2) or (c)(3) of this Section, then the 7Q2 or seasonal 7Q2 for that stream or stream segment may be determined by an affected person or the permitting authority using an estimate based upon limited data only if both the method for estimating, and the estimate itself, are approved by both the Board and permitting authority.

(d) Additional rules for 7Q2 and seasonal 7Q2 determinations.

(1) Any 7Q2 or seasonal 7Q2 determined with a period of record less than 20 years shall be invalid for any purpose except the issuance of the permit or establishment of the site-specific criteria based upon and developed contemporaneously with such 7Q2 or seasonal 7Q2. Any subsequent renewal of such permit must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 until the pertinent period of record equals or exceeds 20 years.

(2) Any subsequent renewal of a permit based upon a 7Q2 or seasonal 7Q2 determined pursuant to (c)(3) or (c)(4) of this Section must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 that takes into account all discharge and flow data from the time the 7Q2 or seasonal 7Q2 was previously determined.

(3) Any subsequent renewal of a permit based upon a 7Q2 or seasonal 7Q2 determined pursuant to (c)(1) of this Section must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 that takes into account whether the hydrological modification continues to exist.

(e) **Alternative method for determination of regulatory low flow.** In stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, including but not limited to the portions of

the Verdigris and Arkansas Rivers constituting the McClellan-Kerr Arkansas River Navigation System, on a site-specific basis a properly designed and implemented hydrologic study approved by the permitting authority and OWRB may be used to determine the appropriate regulatory low flow.

SUBCHAPTER 3. IMPLEMENTATION OF NARRATIVE TOXICS CRITERIA TO PROTECT AQUATIC LIFE USING WHOLE EFFLUENT TOXICITY (WET) TESTING

252:740-3-1. Applicability and scope

(a) The rules in this Subchapter provide a portion of the framework for implementing narrative criteria in OAC 252:730 which prohibit toxicity to aquatic life in waters of the state. This framework is based upon a testing method known as whole effluent toxicity (WET) testing. WET testing is to be used to address point source activities which have the potential for persistent effluent toxicity. The rules in this Subchapter prescribe the method for determining regulatory flow, dilutions required for WET tests, and the method for determining whether there is a reasonable potential to exceed the narrative criteria for the Fish and Wildlife Propagation beneficial use.

(b) If it is determined that toxicity is related to a particular chemical constituent, a numerical permit limit may be imposed for that toxicant.

(c) Toxicity from halogens (e.g. chlorine, bromine and bromo-chloro compounds) will be controlled by dehalogenation rather than WET testing. However, use of dehalogenation shall not exempt an effluent from the WET testing requirements of this Subchapter.

252:740-3-2. Dilutions for whole effluent toxicity testing

(a) **General.** Generally, two whole effluent toxicity tests shall be used to implement the narrative criteria to protect fish and wildlife propagation. The 48 hour acute test will be used to protect against acute toxicity in receiving water, and the 7 or 21 day chronic test will be used to protect against chronic toxicity outside the chronic regulatory mixing zone.

(b) Differing requirements for WET tests.

(1) Three different toxicity testing requirements exist. Each is based upon dilution capacity, represented by Q^* .

(2) When Q^* is less than 0.054, acute testing only shall be required.

(3) When Q^* is greater than 0.33, chronic testing only shall be required.

(4) When Q^* is greater than or equal to 0.054 and less than or equal to 0.33, both acute and chronic testing shall be required.

(5) For a discharge directly to a lake, acute testing only shall be required.

(c) **Dilutions for chronic WET tests for streams.** Whole effluent chronic toxicity testing requires that test organisms be subjected to various effluent dilutions. The dilution series for

chronic toxicity testing is based on the critical dilution (CD). The chronic critical dilution equations are as follows: $CD = (1.94Q^*) / (1 + Q^*)$ when Q^* is less than or equal to 0.1823, or $CD = 1 / (6.17 - 15.51Q^*)$ when Q^* is greater than 0.1823 and less than 0.3333, or $CD = 1$ when Q^* is greater than or equal to 0.3333. $Q^* = Q_g / Q_u$. Q_g is the largest thirty day average flow for an industrial discharge, if known, and the design flow otherwise. Q_u is 1 cfs or the 7Q2 receiving stream flow, if known to be larger. (d) **Dilutions for acute WET tests.** The acute critical dilution is 100%.

252:740-3-3. Sampling for whole effluent toxicity testing

(a) Discharges with overlapping mixing zones may be combined, at the discretion of the permitting agency, and whole effluent toxicity tests may be required on the combined effluent. Samples shall be combined in proportion to the flow for each outfall. If some of the discharges are not toxic, combining discharges may allow intermittent instream toxicity if the discharge rates fluctuate. In these cases combined discharge testing will be disallowed. If the outfall originates from a lagoon with a retention time greater than 24 hours, composite samples may not be necessary. The permitting agency may determine that a grab sample near the discharge is sufficient.

(b) The toxicity test must be initiated within 36 hours after sample collection. No sample may be held for more than 72 hours prior to use.

252:740-3-4. Reasonable potential to exceed narrative toxicity criterion for fish and wildlife propagation

Reasonable potential to exceed the narrative criterion to protect the beneficial use of Fish and Wildlife Propagation against toxicity exists whenever persistent lethality is demonstrated. A permitting authority may deem reasonable potential to be demonstrated whenever intermittent lethality or persistent sublethality occurs. Reasonable potential is assumed to exist when a known toxicant is present, or expected to be present, in a discharge in toxic amounts.

252:740-3-5. Regulatory flow determination

(a) The regulatory flow for a receiving stream is determined according to OAC 252:730-5-12(f)(6)(G) and 252:740-1-6.

(b) No regulatory flow determination is required for a lake.

SUBCHAPTER 5. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT FISH AND WILDLIFE FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES

252:740-5-1. Applicability and scope

Rules in this Subchapter prescribe the method for determining regulatory flow and the method for determining whether there is a reasonable potential to exceed the criteria, all in order to implement numerical criteria identified in OAC

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252:730-5-12(f)(6)(G) and Table 2 of 252:730 Appendix G for protection of the beneficial use of Fish and Wildlife Propagation.

252:740-5-2. Regulatory flow determination

(a) **Regulatory receiving stream flow.** Section 252:730-5-12(f)(6)(G) of the OAC defines the regulatory receiving stream flow upstream of the discharge, Q_{ur} , to be used in implementing fish and wildlife propagation criteria. The Q_{ur} is the greater of the 7Q2 or 1 cfs. 7Q2 shall be determined according to 252:740-1-6. Q_{ur} is assumed to be 1 cfs if the 7Q2 is unknown or the permittee chooses not to develop an actual 7Q2.

(b) **Regulatory flow for lakes.** No regulatory flow determination is required for lakes.

(c) **Regulatory effluent flows.** The regulatory effluent flow, Q_e , is the highest monthly averaged flow over the previous two years for industrial discharges if the permitting authority determines that sufficient data are available. For other dischargers (e.g. municipalities), Q_e is the design flow. If a significant daily or seasonal variability in effluent flow is present, a regulatory effluent flow should take this variability into account.

252:740-5-3. Reasonable potential

(a) **General.** The need for a permit limit will be determined, on a pollutant by pollutant basis, after determination of reasonable potential, which considers assimilation capacity of the receiving water and effluent variability.

(b) **Use of reasonable potential factor; relationship with wasteload allocation process.**

(1) The technical report produced by the Oklahoma Water Resources Board entitled "The Incorporation Of Ambient Concentration With That Due To Effluent For Wasteload Allocation" shall be used to determine if there is a reasonable potential for a criterion exceedance outside the mixing zone. $C_{95} = 2.13C_{mean}$ is used for effluent concentration in the reasonable potential calculation. C_{mean} is the geometric mean of all effluent concentrations analyzed for the toxicant. If the geometric mean cannot be determined, an arithmetic mean may be substituted. If a large dataset of effluent concentrations is available, the permitting authority may not need to estimate C_{95} ; the 95th percentile value can be calculated from the data.

(2) The wasteload allocation process is used to determine reasonable potential. C is the reasonable potential concentration on the chronic regulatory mixing zone boundary. C is calculated for chronic criteria in streams as: $C = C_b + (1.94Q^*(C_{95} - C_b)) / (1 + Q^*)$ when Q^* is less than or equal to 0.1823, or $C = C_b + (C_{95} - C_b) / (6.17 - 15.51Q^*)$ when Q^* is greater than 0.1823 and less than 0.3333, or $C = C_{95}$ when Q^* is greater than or equal to 0.3333. $Q^* = Q_e / Q_{ur}$. Q^* is the dilution capacity. C is calculated for lakes as: *pipe*: $C = C_b + (D(C_{95} - C_b)) / 20.15$ when D is greater than or equal to 3 feet, or *canal*: $C = C_b + (W^{1.2}(C_{95} - C_b)) / 4.2$ when W is greater than or equal to 3 feet. D is the diameter of the discharge pipe in feet and W is the width of the canal in feet. D and W shall not be less than three feet for implementation purposes. When C is the concentration on

the acute regulatory mixing zone boundary it is calculated as $C = C_b + (Q_e(C_{95} - C_b) / 100)$. If Q_e is greater than 100 cfs, then 100 cfs shall be substituted for Q_e .

(3) For regulatory purposes, there is a reasonable potential for chronic toxicity if concentrations of ammonia outside the chronic regulatory mixing zone exceed 6 mg/L.

252:740-5-4. pH and hardness dependent toxicity

The criteria for some of the substances listed in 252:730-5-12(f)(6) are hardness or pH dependent. The segment-averaged pH in Appendix B of this Chapter shall be used to determine the criterion if there is insufficient site-specific data to determine receiving stream pH. The mean hardness of the receiving stream, collected near the outfall but not affected by the discharge (as $CaCO_3$) may be used if at least 10 monthly samples were collected over a ten month period. The segment-averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site-specific data to determine receiving stream hardness. If the required pH or hardness is not specified for a particular waterbody segment, appropriate data from surrounding waterbody segments may be used.

SUBCHAPTER 7. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT HUMAN HEALTH FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES

252:740-7-1. Applicability and scope

(a) **General.** Rules in this Subchapter prescribe the method for determining regulatory flow and to determine whether there is a reasonable potential to exceed the criteria, all in order to implement numerical criteria to protect human health for consumption of fish flesh and/or water.

(b) **Applicable Public and Private Water Supply criteria.** Applicable criteria for waters designated Public and Private Water Supplies are found in OAC 252:730-5-10(1) and OAC 252:730-5-10(6) and OAC 252:730 Appendix G.

(c) **Applicable Fish Consumption criteria.** Applicable criteria for waters designated Warm Water Aquatic Community and/or Cool Water Aquatic Community and/or Trout Fisheries are found in 252:730-5-20 and OAC 252:730 Appendix G.

(d) **Appropriate criterion.** If several criteria apply to human health implementation, the most stringent is used for implementation purposes.

(e) **Applicable receiving waters.** The human health criteria apply in receiving waters designated as Public and Private Water Supplies and certain designated sub-categories of Fish and Wildlife Propagation. Some streams in Appendix A of OAC 252:730 are designated Habitat Limited Aquatic Communities, and are not designated for the Public and Private Water Supply beneficial use. Therefore, human health criteria do not apply to these streams. For implementation purposes these streams are considered conduits to the downstream water body. Human

health criteria must be implemented on the first downstream water body to which they apply.

252:740-7-2. Determination and use of regulatory flow

(a) **General.** OAC 252:730-5-10(1), 252:730-5-10(6)(B) and 252:730-5-20(b) require that long term average receiving stream flows shall be used to implement water column numerical criteria to protect human health.

(b) **Long-term average flow on gaged receiving streams.** Mean annual average flow as determined in the technical report produced by the Oklahoma Water Resources Board entitled "Estimation Of Mean Annual Average Flows" shall be used for long-term average flow in receiving streams which are or have been measured by USGS gages.

(c) **Mean annual average flows on ungaged receiving streams.** Mean annual average flow may be estimated on streams where flow is not routinely measured. This method for estimation is demonstrated in the technical report produced by the Oklahoma Water Resources Board entitled "Estimation Of Mean Annual Average Flows". Other scientifically defensible methods of long-term average flow estimation are permissible if approved by the permitting authority.

(d) **Long-term average flow in lakes.** Q_u cannot be estimated in a lake as easily as it can be for a stream. Therefore, mean annual average discharge from the lake shall be used for Q_u .

(e) **Long-term effluent flow.** The regulatory effluent flow, Q_e , is long-term average effluent flow over the previous two years for industrial discharges if the permitting authority determines that sufficient data are available. For other discharges, Q_e is the design flow.

252:740-7-3. Reasonable potential

(a) **General.** Complete mixing of effluent and receiving water shall be used to determine appropriate permit limits. A mass balance model shall be used for implementation purposes.

(b) **Determination of reasonable potential factor.**

(1) The mass balance equation will be used in the determination of human health reasonable potential: $C = (C_e Q^* + C_b) / (Q^* + I)$. $Q^* = Q_e / Q_u$, where Q_e is the regulatory effluent flow. C must be considered a long-term average concentration after complete mixing. C_b is the background concentration. To determine if there is a reasonable potential to exceed the criterion after complete mixing, choose $C_e = 2.13 C_{mean}$, where C_{mean} is a geometric mean of all effluent concentrations analyzed for the toxicant. If the geometric mean cannot be determined, an arithmetic mean may be used instead.

(2) Representative background concentrations will be used if available. Such representative data should reflect long-term average pollutant concentrations for implementation purposes. Otherwise, C_b is assumed zero.

(3) C must be compared with the applicable water quality criterion to determine if there is a reasonable potential for the pollutant discharge to cause a criterion exceedance. If concentration after complete mixing is greater than the human health criterion, a permit limit will be required.

SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE

252:740-9-1. Applicability and scope

Rules in this Subchapter prescribe the method for determining whether there is a reasonable potential to exceed the criteria identified in OAC 252:730-5-13(h) and OAC 252:730 Appendix F for protection of the beneficial use of Agriculture. Included are criteria for chlorides, sulfates and total dissolved solids.

252:740-9-2. Applicable mineral criteria

(a) **General.** OAC 252:730 Appendix F contains yearly mean standards and sample standards for protection of the Agriculture beneficial use. Historical values for chlorides, sulfates and TDS for water quality segments identified in OAC 252:730 Appendix F will not be updated. Data from surrounding segments shall be used by the permitting authority to develop yearly mean standards and sample standards for those segments with inadequate historical data.

(b) **Segment averages.** Segment averages of yearly mean standards and sample standards or more appropriate determinations as prescribed in (e) and (f) of OAC 252:730-5-13 or (a) of 252:740-9-2 shall be the criteria for chlorides, sulfates and TDS to protect the Agriculture beneficial use.

252:740-9-3. Regulatory flows

(a) **General.** Six regulatory flows are required for implementation of yearly mean standards and sample standards. They include stream flows, regulatory flows for lakes and regulatory effluent flows.

(b) **Long-term average flows for streams.** The greater of 1.47 cfs or mean annual average flow, A , will be used by the permitting authority for long-term average flows to implement yearly mean standards. Mean annual average flows may be obtained from the USGS publication entitled "Statistical Summaries of Streamflow in and near Oklahoma Through 2007". They may also be estimated on streams without gages using the Oklahoma Water Resources Board publication entitled "Estimation of Mean Annual Average Flows" (OWRB Technical Report 96-2).

(c) **Long-term average flow for lakes.** Mean annual average discharge from the lake, A , shall be used to implement the Agriculture beneficial use.

(d) **Regulatory long-term effluent flows.** If the permitting authority determines that sufficient data is available to calculate the mean annual effluent discharge, then such discharge shall be the long term effluent flow, Q_{ej} . If the permitting authority determines insufficient data is available to calculate the mean annual effluent discharge, then the design flow shall be the long term effluent flow, Q_{ej} .

(e) **Short-term average flow for streams.** OAC 252:730-5-4(d) requires that short-term average flow, Q_s , be used to implement sample standards. The short-term average flow is determined so that short-term and long-term wasteload allocations are equally likely to be more stringent, depending on the

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historical concentration distribution for a particular segment. Q_s shall equal the greater of 1.0 cfs or 0.68 A, where A is mean annual average stream flow.

(f) **Short-term average flows for lakes.** Short-term average flows for lakes are also determined by the formula in OAC 242:740-9-3(e). In this case A is the mean annual average lake discharge.

(g) **Short-term average effluent flows.** If the permitting authority determines that sufficient data is available to calculate the highest monthly average discharge for industrial discharges, then such discharge shall be the short-term average effluent flow, Q_{es} . If the permitting authority determines insufficient data is available to calculate the highest monthly average discharge for industrial discharges, then the design flow shall be the short-term average effluent flow, Q_{es} .

252:740-9-4. Reasonable potential

(a) **General.** The need for a permit limit will be determined on a mineral constituent basis, after application of the reasonable potential equation specified in (b) of this Section, which considers assimilation capacity of the receiving water and effluent variability.

(b) **Reasonable potential equation.** OAC 252:730-5-13(d) requires that complete mixing of effluent and receiving water be taken into account in the reasonable potential equation. The use of mass balance to obtain wasteload allocations for complete mixing is codified at OAC 252:740-7-3(a). Therefore, the reasonable potential equation for mineral constituents is $C = (Q_u BC + Q_e C_{95}) / (Q_u + Q_e)$, where $C_{95} = 2.13 C_{mean}$, where C_{mean} is the geometric mean of all effluent concentrations analyzed for the mineral. If the geometric mean cannot be determined, an arithmetic mean may be used. If sufficient effluent concentration observations exist as determined by the permitting authority, then the permitting authority may compute the 95th percentile concentration and use it as C_{95} , in accordance with OAC 252:740-5-3(b)(1).

(c) **Reasonable potential to exceed yearly mean standard.** $Q_u = A$ and $Q_e = Q_{el}$ in OAC 252:740-9-4(b) to obtain a long-term average concentration in-stream after complete mixing. If C is greater than the higher of the YMS or 700 milligrams per liter for TDS or 200 milligrams per liter for chlorides and sulfates, there is a reasonable potential to exceed an Agriculture beneficial use criterion, and a permit limit is required.

(d) **Reasonable potential to exceed sample standard.** $Q_u = 0.68A$ and $Q_e = Q_{es}$ in OAC 252:740-9-4(b) to obtain a short-term average concentration in-stream after complete mixing. If C is greater than the higher of the SS or 700 milligrams per liter for TDS or 200 milligrams per liter for chlorides and sulfates, there is a reasonable potential to exceed an Agriculture beneficial use criterion, so a permit limit is required.

252:740-11-1. Applicability and scope

(a) OAC 252:730-5-12(f)(2) provides that at no time shall heat be added in excess of the amount that will raise receiving water temperature more than 2.8 C outside the mixing zone. Therefore, the temperature criterion will be implemented with respect to regulatory flow and reasonable potential at the maximum temperature on the edge of the mixing zone.

(b) OAC 252:730-5-26 provides generally to the effect that in streams the mixing zone encompasses 25% of the total flow. The mixing zone in lakes may be designated by the permitting authority on a case by case basis. To be consistent, the mixing zone used for numerical criteria implementation to protect fish and wildlife propagation from toxicity will be employed for temperature implementation in lakes. This mixing zone is defined to extend 100 feet into the lake from the source.

(c) Temperature implementation does not apply to privately owned cooling water reservoirs. Such reservoirs are specifically exempted in OAC 252:730-5-12(f)(2)(F) from implementation of temperature criteria to protect aquatic life. However, implementation of the antidegradation policy includes a maximum temperature (52C) which applies to all waters of the state including privately owned cooling water reservoirs. Privately owned cooling water reservoirs, however, that demonstrate no reasonable potential to exceed the antidegradation temperature shall not be limited in permits by such temperature.

(d) All calculations to implement temperature criteria shall be done in C at critical temperature conditions.

252:740-11-2. Applicable temperatures

(a) **General.** OAC 252:730-5-12(f)(2) governs what the applicable temperature criteria are.

(b) **Habitat Limited and Warm Water Aquatic Community.**

(1) In waters which are designated in OAC 252:730 to be Habitat Limited Aquatic Community and/or Warm Water Aquatic Community, no heat of artificial origin shall be added that causes the receiving water to exceed the critical temperature plus 2.8C outside the mixing zone.

(2) The temperature criterion for Habitat Limited Aquatic Community and/or Warm Water Aquatic Community, T_c , is the critical temperature plus 2.8C. In the absence of data, T_c is 32.24 C. Where data exist, the critical temperature is the higher of 29.44C or the seven-day maximum temperature likely to occur with a 50% probability each year, 7T2. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m, is calculated based on the number of years of record, n, with a recurrence interval of 2 years, as $m = (n+1)/2$. The m^{th} highest average temperature is the 7T2. Provided, in the segment of the Arkansas River from Red Rock Creek to the headwaters of Keystone Reservoir, the maximum temperature outside the mixing zone shall not exceed 34.4C.

(3) To implement the temperature criterion for Habitat Limited Aquatic Community and/or Warm Water Aquatic

SUBCHAPTER 11. IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION

Community protection, the critical temperature also is the regulatory ambient temperature, T_a .

(c) **Cool Water Aquatic Communities.** In waters designated in OAC 252:730 to be Cool Water Aquatic Community, T_c is 28.9C. To be consistent with implementation for Warm Water and Habitat Limited Aquatic Communities, the regulatory ambient temperature must be 2.8C less than T_c . Therefore, $T_a = 26.1$ C for Cool Water Aquatic Communities.

(d) **Trout Fisheries.** In waters designated in OAC 252:730 to be Trout Fishery, no artificial heat shall be added such that the temperature in the receiving water exceeds 20C outside the mixing zone. However, water temperatures regularly reach in excess of 20C in Oklahoma's summers. When background levels exceed this criterion, the effluent level should equal the criterion. Therefore, the wasteload allocation for Trout Fisheries is 20C.

252:740-11-3. Regulatory flows

(a) Regulatory receiving stream flow to protect the Fish and Wildlife Propagation beneficial use, Q_u , is the greater of the 7Q2 or 1 cfs. Q_u is assumed to be 1 cfs if the 7Q2 is unknown.

(b) The regulatory effluent flow, Q_e , is defined as the highest monthly averaged flow in cfs over the past two years for industrial discharges with adequate data. Q_e is the design flow in cfs for other dischargers.

252:740-11-4. Reasonable potential

A permit limit for temperature is required if there is a reasonable potential that the temperature increase at the edge of the mixing zone is greater than 2.8C. EPA Region 6 uses a reasonable potential factor to determine if there is a reasonable potential that concentration of a given substance will exceed the criterion. An analogous reasonable potential factor, T_f , will be used to determine if there is a reasonable potential that temperature will exceed the criterion by 2.8C at the edge of the mixing zone. T_f is determined such that only approximately 5% of the observed temperatures are higher. Therefore, T_f is the upper 95th percentile of the effluent temperature distribution.

252:740-11-5. Reasonable potential equations

(a) The maximum temperature difference on the mixing zone boundary must be computed using the following equation to determine if there is a reasonable potential to exceed 2.8C outside the mixing zone: $T' = (T_f - T_a) / df$. The dilution factor, df , must be that which yields the maximum temperature difference on the mixing zone boundary.

(b) Substituting for df , the following equations shall be used for discharges to streams:

$T' = (1.94Q^*(T_f - T_a)) / (1 + Q^*)$ when Q^* is less than or equal to 0.1823, or $T' = (T_f - T_a) / (6.17 - 15.51Q^*)$ when Q^* is greater than 0.1823 and less than 0.3333, or $T' = T_f - T_a$ when Q^* is greater than or equal to 0.3333. $Q^* = Q_e / Q_u$ (the dilution capacity).

(c) The following equations shall be used for discharges to lakes: $T' = (D(T_f - T_a)) / 20.15$ when is greater than or equal to 3 feet. D is pipe diameter, and $T' = (W^{1/2}(T_f - T_a)) / 4.2$ when W is greater than or equal to 3 feet. W is canal width.

(d) There is a reasonable potential that the effluent may cause a criterion exceedance at the maximum concentration on the mixing zone boundary if $T' > 2.8C$.

SUBCHAPTER 13. IMPLEMENTATION OF ANTIDegradATION POLICY

252:740-13-1. Applicability and scope

(a) The rules in this Subchapter provide a framework for implementing the antidegradation policy stated in OAC 252:730-3-2 and OAC 252:730-5-25 for all waters of the state. This policy and framework includes four tiers, or levels, of protection.

(b) The four tiers of protection are as follows:

(1) Tier 1. Attainment or maintenance of an existing or designated beneficial use.

(2) Tier 2. Maintenance and protection Sensitive Water Supply-Reuse waterbodies.

(3) Tier 2.5 Maintenance and protection of High Quality Waters, Sensitive Public and Private Water Supply waters.

(4) Tier 3. No degradation of water quality allowed in Outstanding Resource Waters.

(c) In addition to the four tiers of protection, this Subchapter provides rules to implement the protection of waters in areas listed in Appendix B of OAC 252:730. Although Appendix B areas are not mentioned in OAC 252:730-3-2, the framework for protection of Appendix B areas is similar to the implementation framework for the antidegradation policy.

(d) In circumstances where more than one beneficial use limitation exists for a waterbody, the most protective limitation shall apply. For example, all antidegradation policy implementation rules applicable to Tier 1 waterbodies shall be applicable also to Tier 2, Tier 2.5 and Tier 3 waterbodies or areas, and implementation rules applicable to Tier 2 waterbodies shall be applicable also to Tier 2.5 and Tier 3 waterbodies.

(e) Publicly owned treatment works may use design flow, mass loadings or concentration, as appropriate, to calculate compliance with the increased loading requirements of this section if those flows, loadings or concentrations were approved by the Oklahoma Department of Environmental Quality as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, SWS, or SWS-R limitation.

252:740-13-2. Definitions

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

"Specified pollutants" means:

(A) Oxygen demanding substances, measured as Carbonaceous Biochemical Oxygen Demand (CBOD) and/or Biochemical Oxygen Demand (BOD);

(B) Ammonia Nitrogen and/or Total Organic Nitrogen;

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- (C) Phosphorus;
- (D) Total Suspended Solids (TSS); and
- (E) Such other substances as may be determined by DEQ or the permitting authority.

252:740-13-3. Tier 1 protection; attainment or maintenance of an existing or designated beneficial use

(a) General.

(1) Beneficial uses which are existing or designated shall be maintained and protected.

(2) The process of issuing permits for discharges to waters of the state is one of several means employed by governmental agencies and affected persons which are designed to attain or maintain beneficial uses which have been designated for those waters. For example, Subchapters 3, 5, 7, 9 and 11 of this Chapter are rules for the permitting process. As such, the latter Subchapters not only implement numerical and narrative criteria, but also implement Tier 1 of the antidegradation policy.

(b) Thermal pollution. Thermal pollution shall be prohibited in all waters of the state. Temperatures greater than 52 degrees Centigrade shall constitute thermal pollution and shall be prohibited in all waters of the state.

(c) Prohibition against degradation of improved waters. As the quality of any waters of the state improves, no degradation of such improved waters shall be allowed.

252:740-13-4. Tier 2 protection; maintenance and protection of sensitive water supply-reuse and other tier 2 waterbodies

(a) General rules for Sensitive Water Supply - Reuse (SWS-R) Waters.

(1) Classification of SWS-R Waters. DEQ may consider classification of a waterbody as an SWS-R waterbody based upon required documentation submitted by any interested party. The interested party shall submit documentation presenting background information and justification to support the classification of a waterbody as SWS-R including, but not limited to, the following:

(A) Determination of the waterbody's assimilative capacity pursuant to 252:740-13-8, including all supporting information and calculations.

(B) Documentation demonstrating that municipal wastewater discharge for the purpose of water supply augmentation has been considered as part of a local water supply plan or other local planning document.

(C) Any additional information or documentation necessary for DEQ's consideration of a request for the classification of a waterbody as SWS-R.

(D) Prior to consideration by DEQ, any interested party seeking the classification of a waterbody as SWS-R shall submit documentation to DEQ staff demonstrating that local stakeholders, including those that use the waterbody for any designated or existing beneficial uses, have been afforded notice and an opportunity for an informal public meeting,

if requested, regarding the proposed classification of the waterbody as SWS-R at least one hundred eighty (180) days prior to DEQ consideration. In addition, all information or documentation submitted pursuant to this subsection shall be available for public review.

(2) The drought of record waterbody level shall be considered the receiving water critical condition for SWS-R waterbodies.

(A) All beneficial uses shall be maintained and protected during drought of record conditions.

(B) Drought of record shall be determined with the permitting authority approved monthly time step model using hydrologic data with a minimum period of record from 1950 to the present. If empirical data are not available over the minimum period of record, modeled data shall be included in the analysis, if available.

(3) In accordance with OAC 252:730-5-25(c)(8)(D), SWS-R waterbodies with a permitted discharge shall be monitored and water quality technically evaluated to ensure that beneficial uses are protected and maintained and use of assimilative capacity does not exceed that prescribed by permit. Prior to any monitoring and/or technical analysis, the permittee shall submit a Receiving Water Monitoring and Evaluation Plan to the permitting authority for review and approval.

(A) The Receiving Water Monitoring and Evaluation Plan shall include, at a minimum, the following sections:

(i) Monitoring section that meets the required spatial, temporal, and parametric coverage of this subchapter, OAC 252:740-15, and OAC 252:628-11.

(ii) Analysis and reporting section that meets the requirements of this subchapter, OAC 252:740-15, and OAC 252:628-11.

(iii) Quality Assurance Project Plan that meets the most recent requirements for United States Environmental Protection Agency Quality Assurance Project Plans.

(B) The monitoring section of the Receiving Water Monitoring and Evaluation Plan, at a minimum shall:

(i) Include parametric, temporal (including frequency of sampling events), and spatial sampling design adequate to characterize water quality related to limnological, hydrologic, seasonal, and diurnal influences and variation.

(ii) Include nutrient monitoring adequate to characterize both external and internal loading and nutrient cycling.

(iii) Include algal biomass monitoring consistent with this sub-paragraph (B) and phytoplankton monitoring sufficient to evaluate general shifts and/or trends in phytoplankton community dynamics over time.

(iv) Include in-situ monitoring of dissolved oxygen, temperature, and pH adequate to characterize diurnal changes and fluctuations during

periods of thermal stratification and complete mix.

(v) Include monitoring of pollutants with a permit effluent limit and/or permit monitoring requirements.

(C) The Receiving Water Monitoring and Evaluation Plan may include special studies, as necessary.

(D) At least biennially and prior to permit renewal, the permittee shall submit a Receiving Water Monitoring and Evaluation Report to the permitting authority that includes, at a minimum:

(i) Summarized review of monitoring objectives and approach.

(ii) Presentation and evaluation of monitoring results, including an analysis of both short-term and long-term trends.

(iii) An assessment of beneficial use attainment that is at a minimum in accordance with OAC 252:740-15.

(iv) Summarized assessment of data quality objectives, including an explanation of any data quality issues.

(v) All monitoring data shall be submitted electronically.

(E) If the report documents nonattainment of a beneficial use(s) resulting from the discharge, the permitting authority shall consider actions including, but not limited to, additional permit requirements, cessation of the discharge, and/or a recommendation to DEQ to revoke the SWS-R waterbody classification.

(b) General rules for other Tier 2 Waterbodies.

(1) General rules for other Tier 2 waterbodies shall be developed as waters are identified.

252:740-13-5. Tier 2.5 protection; maintenance and protection of high quality waters, sensitive water supplies, and other tier 2.5 waterbodies

(a) **General rules for High Quality Waters.** New point source discharges of any pollutant after June 11, 1989, and increased load or concentration of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 252:730 with the limitation "HQW". Any discharge of any pollutant to a waterbody designated "HQW" which would, if it occurred, lower existing water quality shall be prohibited. Provided however, new point source discharges or increased load or concentration of any specified pollutant from a discharge existing as of June 11, 1989, may be approved by the permitting authority in circumstances where the discharger demonstrates to the satisfaction of the permitting authority that such new discharge or increased load or concentration would result in maintaining or improving the level of water quality which exceeds that necessary to support recreation and propagation of fishes, shellfishes, and wildlife in the receiving water.

(b) **General rules for sensitive public and private water supplies.** New point source discharges of any pollutant after June 11, 1989, and increased load of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 252:730 with the limitation "SWS". Any discharge of any pollutant to a waterbody designated "SWS" which would, if it occurred, lower existing water quality shall be prohibited. Provided however, new point source discharges or increased load of any specified pollutant from a discharge existing as of June 11, 1989, may be approved by the permitting authority in circumstances where the discharger demonstrates to the satisfaction of the permitting authority that such new discharge or increased load will result in maintaining or improving the water quality in both the direct receiving water, if designated SWS, and any downstream waterbodies designated SWS.

(c) **Stormwater discharges.** Regardless of subsections (a) and (b) of this Section, point source discharges of stormwater to waterbodies and watersheds designated "HQW", "SWS" may be approved by the permitting authority.

(d) **Nonpoint source discharges or runoff.** Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds of waterbodies designated "HQW", or "SWS" in Appendix A of OAC 252:730.

252:740-13-6. Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters

(a) **General.** New point source discharges of any pollutant after June 11, 1989, and increased load of any pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 252:730 with the limitation "ORW" and/or "Scenic River", and in any waterbody located within the watershed of any waterbody designated with the limitation "Scenic River". Any discharge of any pollutant to a waterbody designated "ORW" or "Scenic River" which would, if it occurred, lower existing water quality shall be prohibited.

(b) **Stormwater discharges.** Regardless of 252:740-13-6(a), point source discharges of stormwater from temporary construction activities to waterbodies and watersheds designated "ORW" and/or "Scenic River" may be permitted by the permitting authority. Regardless of 252:740-13-6(a), discharges of stormwater to waterbodies and watersheds designated "ORW" and/or "Scenic River" from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992, may be permitted by the permitting authority; provided, however, increased load of any pollutant from such stormwater discharge shall be prohibited.

(c) **Nonpoint source discharges or runoff.** Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds of waterbodies designated "ORW" in Appendix A of OAC 252:730, provided,

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however, that development of conservation plans shall be required in sub-watersheds where discharges or runoff from non-point sources are identified as causing or significantly contributing to degradation in a waterbody designated "ORW".

(d) **LMFO's. No licensed managed feeding operation (LMFO) established after June 10, 1998 which applies for a new or expanding license from the State Department of Agriculture after March 9, 1998 shall be located...[w]ithin three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act in 82 O.S. Section 1451 and following, or [w]ithin one (1) mile of a waterbody [2:9-210.3(D)] designated in Appendix A of OAC 252:730 as "ORW".**

252:740-13-7. Protection for Appendix B areas

(a) **General.** Appendix B of OAC 252:730 identifies areas in Oklahoma with waters of recreational and/or ecological significance. These areas are divided into Table 1, which includes national and state parks, national forests, wildlife area, wildlife management areas and wildlife refuges; and Table 2, which includes areas which contain threatened or endangered species listed as such by the federal government pursuant to the federal Endangered Species Act as amended.

(b) **Protection for Table 1 areas.** New discharges of pollutants after June 11, 1989, or increased loading of pollutants from discharges existing as of June 11, 1989, to waters within the boundaries of areas listed in Table 1 of Appendix B of OAC 252:730 may be approved by the permitting authority under such conditions as ensure that the recreational and ecological significance of these waters will be maintained.

(c) **Protection for Table 2 areas.** Discharges or other activities associated with those waters within the boundaries listed in Table 2 of Appendix B of OAC 252:730 may be restricted through agreements between appropriate regulatory agencies and the United States Fish and Wildlife Service. Discharges or other activities in such areas shall not substantially disrupt the threatened or endangered species inhabiting the receiving water.

(d) **Nonpoint source discharges or runoff.** Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds located within areas listed in Appendix B of OAC 252:730.

252:740-13-8. Antidegradation review in surface waters

(a) **General.** The antidegradation review process below presents the framework to be used when making decisions regarding the intentional lowering of water quality, where water quality is better than the minimum necessary to protect beneficial uses. OWRB technical guidance TRWQ2017-01 provides additional information.

(b) **Determination of Assimilative Capacity in Tier 2, Tier 2.5, and Tier 3 Waters.**

(1) All water quality monitoring and technical analyses necessary to determine receiving waterbody assimilative capacity for all applicable numeric and narrative criteria and associated parameters protective of waterbody beneficial uses shall be conducted by the interested party.

(2) Prior to initiating any monitoring or technical analysis to support determination of waterbody assimilative capacity, the interested party shall submit a workplan consistent with the requirements of OWRB technical guidance TRWQ2017-01 for review and approval by DEQ staff.

(3) As part of an approved workplan, the interested party shall characterize existing water quality of the receiving waterbody for each applicable criteria and associated parameters and evaluate if there is available assimilative capacity. Consistent with OWRB technical guidance TRWQ2017-01, characterization of existing water quality shall address, at a minimum:

(A) Measurement of load and or concentration for all applicable criteria and associated parameter(s) in the receiving water; and

(B) The measurement of both existing and proposed point and nonpoint source discharge concentrations and or loadings, including the measurement of external and internal nutrient loading, where required by OWRB technical guidance TRWQ2017-01; and

(C) The critical low flow or critical lake level of the receiving waterbody, including drought of record in waterbodies receiving IPR discharges; and

(D) The limnological, hydrologic, seasonal, spatial and temporal variability and critical conditions of the waterbody; and

(E) Volumetric determination of anoxic dissolved oxygen condition consistent with OAC 252:730 and 252:740; and

(F) The bioaccumulative nature of a pollutant shall be considered when determining assimilative capacity; and

(G) The 303(d) list as contained in the most recently approved Integrated Water Quality Assessment Report shall be reviewed and any difference between the water quality assessment information and the characterization of existing water quality shall be reconciled.

(4) Assimilative capacity shall be determined by comparing existing water quality, as determined consistent with subsection (a)(3) above to the applicable narrative and numeric criteria. In Tier 2 waters, assimilative capacity shall be determined and used with a margin(s) of safety (252:740-13-8(d)(1)(D)), which takes into account any uncertainty between existing or proposed discharges and impacts on receiving water quality.

(5) When existing water quality does not meet the criterion or associated parameter necessary to support beneficial use(s) or is identified as impaired on Oklahoma's 303(d) list as contained in the most recently approved Integrated Water Quality Assessment Report, no assimilative capacity shall exist for the given criterion.

(c) **Use of Assimilative Capacity in Tier 1 Waters.** Available assimilative capacity may be used in Tier 1 waters such that, water quality is maintained to fully protect all designated and existing beneficial uses.

(d) **Use of Assimilative Capacity in Tier 2 Waters.**

(1) If it is determined that assimilative capacity is available, the consumption of assimilative capacity may be allowed in a manner consistent with the requirements in 40 CFR 131.12(a)(2) and this subchapter. In allowing the use of assimilative capacity, the state shall assure that:

(A) Water quality shall be maintained to fully protect designated and existing beneficial uses.

(B) Assimilative capacity shall be reserved such that all applicable narrative criteria in OAC 252:730 are attained and beneficial uses are protected.

(C) Fifty percent (50%) of assimilative capacity shall be reserved for all applicable water quality criteria listed in OAC 252:730, Appendix G, Table 2.

(D) In order to preserve a margin of safety; in no case shall any activity be authorized without the application of margin(s) of safety specified below:

(i) A twenty percent (20%) margin of safety shall be applied to an applicable numeric criterion for chlorophyll-a, total phosphorus, and total nitrogen. If numeric criteria are not available, the narrative nutrient criterion (252:730-5-9(d)) shall be applied and a twenty percent (20%) margin of safety shall be applied to the parameters listed in the criterion.

(ii) No more than forty-five percent (45%) of the lake volume shall be less than the dissolved oxygen criterion magnitude in OAC 252:730-5-12(f)(1)(C)(ii).

(iii) If the existing value of a criterion is within the margin of safety, no assimilative capacity is available and existing water quality shall be maintained or improved.

(E) When existing water quality does not satisfy the applicable criterion and support beneficial use(s) or has been designated as impaired in Oklahoma's 303(d) list as contained in the most recently approved Integrated Water Quality Assessment Report, the applicable criterion shall be met at the point of discharge. If a TMDL has been approved for the impairment, loading capacity for the parameter may be available if TMDL load allocations include the proposed load from the discharge.

(2) An analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the water quality degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation.

(3) After an analysis of alternatives and an option that utilizes any or all of the assimilative capacity is selected, the discharger must demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(e) **Use of Assimilative Capacity in Tier 2.5 or 3.0 Waters.** Consistent with 252:730-3-2(a) - (c), 252:730-5-25(a), 252:730-5-25(b), and 252:730-5-25(c)(1) - (c)(6) all available

assimilative capacity shall be reserved in waterbodies classified as Tier 2.5 or 3.0 waters.

(f) **Public Participation.** Agencies implementing subsection 8(d), shall conduct all activities with intergovernmental coordination and according to each agency's public participation procedures, including those specified in Oklahoma's continuing planning process.

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

252:740-15-1. Scope and applicability

(a) **General.** The rules in this Subchapter provide protocols which shall be used on and after October 1, 2000 to determine whether certain beneficial uses of waters of the state designated in OAC 252:730 are being supported. Such determinations shall be made only to the extent that pertinent provisions of OAC 252:730 apply to a waterbody or its designated uses. The rules in this Subchapter are not intended and should not be construed to limit any actions by federal or state agencies or citizens to prevent pollution or to limit remedies to abate pollution from a single incident or activity or series of incidents or activities.

(b) **Significance of assessment that a use is other than fully supported.** A determination based upon application of the rules in this Subchapter that a waterbody's beneficial use is not supported or is partially supported creates a presumption that the use is impaired or not attained for that waterbody and that the waterbody segment is a water quality limited segment.

(c) **Agency discretion to consider additional data.** An agency with jurisdiction may consider other relevant data meeting the requirements of this Subchapter in addition to that required by the rules in this Subchapter for any particular parameter to determine full support or non-support.

252:740-15-2. Definitions

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

"Ecoregion" means a geographical area within which ecosystems and the type, quality and quantity of environmental resources are generally similar, as more specifically described in EPA's 1997 revision of Omernick, "Ecoregions of the Conterminous United States", Annals of the Association of American Geographers.

"Impaired" means one or more designated beneficial uses are not being attained.

"MQL" means minimum quantification level.

"Non-wadable" means a stream which is not wadable.

"Rolling average" means the mathematical average of data values across a fixed length of time that incrementally changes its starting point but retains a fixed length of time by also incrementally changing its end point for each recalculation of the average. This term is also known as "moving average".

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"Screening level" means an evaluation threshold based upon criteria prescribed in OAC 252:730 to protect a designated beneficial use.

"Seasonal base flow" means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

"303(d) List" means the list of waterbodies with uses that are either threatened or impaired, developed for the State of Oklahoma in accordance with Section 303(d) of the federal Clean Water Act.

"303(b) Report" means the report of water quality in the State of Oklahoma developed in accordance with Section 305(b) of the federal Clean Water Act.

"Trophic State Index" means the results of the calculation for chlorophyll-a concentration using both Carlson, R.E. 1977, A Trophic State Index For Lakes, *Limnology and Oceanography*, 22:361-369 and the methods outlined in the Board guidance document "Guidance For Determining Lake Trophic State For Determination Of Nutrient Limited Waters Status".

"Wadable" means a stream or segment thereof, at least 10 percent of which under seasonal base flow conditions is:

- (A) less than 1.25 meters deep at its thalweg, and
- (B) has an instantaneous discharge of less than 10 cubic feet per second, or has a velocity of less than 10 centimeters per second.

"Waterbody" means a body of waters of the state.

252:740-15-3. Data requirements

(a) **General.** In order to determine whether a given beneficial use of a waterbody is supported, scientific data from the waterbody shall be used as prescribed in this Section. Data shall be collected and analyzed in a manner consistent with testing procedures provided in 252:730-1-4 or practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with 252:740-15-3(g). All existing data available for a waterbody shall be used in the analysis, subject to the spatial, temporal and other requirements of this Section.

(b) Spatial coverage.

(1) **General for streams.** The spatial extent of assessment of use support in terms of stream miles shall be determined after taking into account existing data, spatial distribution of monitoring sites, sources of pollution and influence of tributaries. Major hydrological features, such as the confluence of a major tributary or a dam, may limit the spatial extent of an assessment based on one station.

(2) **Non-wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 25 stream miles for non-wadable streams.

(3) **Wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 10 stream miles for wadable streams.

(4) **Lakes.** The spatial extent of assessment of use support in terms of lake surface acres shall be estimated based on the spatial distribution of monitoring sites having the

requisite number of samples, sources of pollution, influence of tributaries and best professional judgment. Arms or portions of lake may be treated separately from the main body of a lake. Unless it is demonstrated to the contrary, a single site shall be considered representative of an entire lake or an arm of no more than two hundred and fifty surface acres in size.

(5) **Spatial limitation for sampling sites.** For purposes of this Subchapter, observations, samples, and other data shall not be taken within any regulatory mixing zone.

(c) Temporal coverage.

(1) **General.** Observations, samples or other data collected for purposes of assessing use support shall be taken to avoid temporal bias, and seasonality shall be represented in the sampling scheme.

(2) **Streams.** Data no older than five years old shall be utilized in assessing use support for a stream unless

- (A) the data available from the preceding five year period is insufficient to satisfy the requirements of 252:740-15-3(d) or other more specific minimum requirements provided in this Subchapter, in which case data older than five years old may be utilized, or
- (B) the provisions of 252:740-15-4(b)(3) or 252:740-15-4(c)(3) apply.

(3) **Lakes.** Data no older than ten years old shall be utilized in assessing use support for a lake unless

- (A) the data available from the preceding ten year period is insufficient to satisfy the requirements of 252:740-15-3(d) or other more specific minimum requirements provided in this Subchapter, in which case data older than ten years old may be utilized, or
- (B) the provisions of 252:740-15-4(b)(3) or 252:740-15-4(c)(3) apply.

(d) Minimum number of samples.

(1) Except when (f) of this Section applies, or unless otherwise noted in subchapter 252:740-15 for a particular parameter, a minimum number of samples shall be required to assess beneficial use support.

- (A) For streams and rivers, a minimum of 10 samples shall be required.
- (B) For lakes greater than 250 surface acres, a minimum of 20 samples shall be required.
- (C) For lakes 250 surface acres or smaller, a minimum of 10 samples shall be required.
- (D) For toxicants for the protection of the Fish and Wildlife Propagation and Public and Private Water beneficial uses, a minimum of 5 samples shall be required.

(2) In order to satisfy the minimum sample requirements of this sub-section, samples may be aggregated consistent with the spatial and temporal requirements prescribed in (b), (c), and (d) of this Section.

(3) The prescribed minimum samples shall not be necessary if the available samples already assure exceedance of the applicable percentage for beneficial use assessment.

(4) If a mathematical calculation including, but not limited to, a mean, median, or quartile, is required for

assessment, a minimum of ten samples shall be required, regardless of the parameter type.

(5) Additional samples for the calculation of temperature, pH and hardness dependent acute and chronic criteria shall be collected as required by OAC 252:740-5-4.

(e) **Application of PQL.**

(1) **Criteria above PQL.**

(A) If sample values are below the PQL for a parameter whose criterion is above the PQL, appropriate nonparametric statistical measures shall be used to determine the reporting value.

(B) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is above the PQL, then such value shall be deemed to be one-half (1/2) of the parameter PQL.

(C) All sample values that are above the PQL shall be the reported values.

(2) **Criteria equal to or below PQL.**

(A) If sample values are below the PQL for a criterion which is less than one-half (1/2) of the PQL, then the values shall be deemed to be zero (0) until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as zero (0) until the next test result appears above the PQL.

(B) For those parameters whose criteria are at least two (2) orders of magnitude below the PQL, evidence considered with respect to assessment of use support shall include fish tissue analysis, biological community analysis, biological thresholds wherever available, or other holistic indicators which are appropriate for the beneficial use in question.

(C) If sample values are below the PQL for a criterion which is greater than or equal to one-half (1/2) of the PQL but less than the PQL, then the values shall be deemed to be one-half (1/2) of the criterion value until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as equal to one-half (1/2) of the criterion value until the next test result appears above the PQL.

(D) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is below the PQL, then such value shall be deemed to be one-half (1/2) of the criterion value.

(E) All sample values that are above the PQL shall be the reported values.

(f) **Magnitude of criteria exceedance.**

(1) **General.** The magnitude of exceedance, as well as frequency of exceedances, shall be used in determining

beneficial use support. Samples shall be taken only during conditions when criteria apply.

(2) **Toxicants.** If two or more concentrations of toxicants exceed criteria or screening levels to protect human health or aquatic life by two orders of magnitude or more, the associated beneficial use shall be deemed to be not supported.

(3) **Dissolved oxygen.** If more than two concentrations of DO in a stream are observed to be below 2 mg/L in any given year, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(4) **Other parameters.** The magnitude and frequency of exceedances to be used for determining beneficial use support for parameters other than toxicants and DO shall be as prescribed in the rules elsewhere in this Subchapter.

(g) **Quality assurance.** On and after July 1, 2002, data collected for purposes of use support assessment shall be collected using documented programmatic quality assurance and quality control methods substantially in accordance with those required by "EPA Requirements for Quality Assurance Project Plans", EPA publication no. EPA/240/B-01/003 (March 2001). The sampling and testing methods used shall protect the integrity of the sample and provide detailed documentation of analysis.

252:740-15-4. Default protocols

(a) **General.** The protocols prescribed in this Section shall apply whenever the more specific protocols prescribed elsewhere in this Subchapter do not apply.

(b) **Short-term average numerical parameters.**

(1) Short-term average numerical parameters are based upon exposure periods of less than seven days. Short-term average parameters to which this Section applies include, but are not limited to, sample standards and turbidity.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a short-term average if 10% or less of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a short-term average if at least 10% of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(c) **Long-term average numerical parameters.**

(1) Long-term average numerical parameters are based upon exposure periods of seven days or longer. Assessment decisions shall be based upon the mean of all data

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meeting the temporal and spatial data requirements described elsewhere in this Subchapter.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a long-term average if the mean of the sample results does not exceed the long-term criterion.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a long-term average if the mean of the sample results exceeds the criterion or screening level.

252:740-15-5. Assessment of Fish and Wildlife Propagation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish and Wildlife Propagation or any subcategory thereof designated in OAC 252:730 for a waterbody is supported.

(b) **Dissolved oxygen.** For purposes of assessment, listing and reporting under sections 303(d) and 305(b) of the federal Clean Water Act as amended, the procedure for determining use support of the Fish and Wildlife Propagation beneficial use or any subcategory thereof with respect to dissolved oxygen shall be as follows:

(1) Support tests for HLAC streams.

(A) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples across all life stages and seasons exhibit DO concentration below the following season-specific thresholds:

(i) April 1 through June 15: 4.0 mg/L

(ii) June 16 through March 31: 3.0 mg/L

(B) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples across all seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

(i) April 1 through June 15: 4.0 mg/L

(ii) June 16 through March 31: 3.0 mg/L

(2) Support tests for WWAC streams.

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples across all life stages and seasons exhibit DO

concentration below the following season-specific thresholds:

(i) April 1 through June 15: 6.0 mg/L

(ii) June 16 through March 31: 5.0 mg/L

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the upper DO threshold and 10% or less of the samples across all seasons exhibit DO concentrations below the lower DO threshold considering the following season-specific ranges:

(i) April 1 through June 15: 5.0 mg/L to 6.0 mg/L

(ii) June 16 through October 15: 4.0 mg/L to 5.0 mg/L

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

(i) April 1 through June 15: 5.0 mg/L

(ii) June 16 through October 15: 4.0 mg/L

(iii) October 16 through March 31: 5.0 mg/L

(3) Support tests for CWAC and Trout streams.

(A) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds:

(i) March 1 through May 31: 7.0 mg/L

(ii) June 1 through last day of February: 6.0 mg/L

(B) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the upper DO threshold and 10% or less of the samples across all seasons exhibit DO concentrations below the lower DO threshold considering the following season-specific ranges:

(i) March 1 through May 31: 7.0 mg/L to 6.0 mg/L

(ii) June 1 through October 15: 6.0 mg/L to 5.0 mg/L

(C) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific

thresholds due to other than naturally occurring conditions:

- (i) March 1 through May 31: 6.0 mg/L
- (ii) June 1 through October 15: 5.0 mg/L
- (iii) October 16 through the last day of February: 6.0 mg/L

(4) **Support tests for WWAC lakes.** The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if both the Surface and Water Column criteria prescribed in (5)(A) and (6)(A) of this subsection (b) are satisfied. If either of the Surface or Water Column criteria prescribed in (5)(B) or (6)(B) produce a result of undetermined, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion; provided, if either of the Surface or Water Column criteria prescribed in (5)(C) or (6)(C) produce a result of not supported, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion.

(5) **Surface criteria for WWAC lakes.**

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the surface samples across life stages and all seasons exhibit DO concentrations below the following season-specific thresholds:

- (i) April 1 through June 15: 6.0 mg/L
- (ii) June 16 through March 31: 5.0 mg/L

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the surface samples across all life stages and seasons exhibit DO concentrations below the upper DO threshold and 10% or less of the surface samples across all seasons exhibit DO concentrations below the lower DO threshold considering the following season-specific ranges:

- (i) April 1 through June 15: 5.0 mg/L to 6.0 mg/L
- (ii) June 16 through October 15: 4.0 mg/L to 5.0 mg/L

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion if more than 10% of the surface samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

- (i) April 1 through June 15: 5.0 mg/L
- (ii) June 16 through October 15: 4.0 mg/L
- (iii) October 16 through March 31: 5.0 mg/L

(D) "Surface", when used in this Section, means surface waters or the mixed surface layer, typically represented by a sample taken at least 0.5 m below the surface.

(6) **Water column criteria for WWAC lakes.**

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if less than 50% of the volume (if volumetric data is available) or 50% or less of the water column (if no volumetric data is available) of all sample sites in the lake are less than 2.0 mg/L.

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion (if no volumetric data is available) if 50% or more, but not greater than 70%, of the water column at any given sample site in the lake is less than 2.0 mg/L due to other than naturally occurring conditions.

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion if 50% or more of the water volume (if volumetric data is available) or more than 70% of the water column (if no volumetric data is available) at any given sample site is less than 2.0 mg/L.

(D) If a lake specific study including historical analysis produces a support status which is contrary to an assessment obtained from the application of (A), (B) or (C) of (b)(6) of this section, then that lake specific result will control.

(7) **Additional application/exercise when support undetermined.** In instances where application of the tests in this subsection (b) initially produce a result that the pertinent subcategory is undetermined with respect to the DO criterion, such shall be subject to additional investigation that considers diurnal data for further application of such tests in order to resolve the determination of use support.

(c) **Toxicants.**

(1) **Test for Full Support.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if no more than one of the sample concentrations from the waterbody exceeds the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 252:730-5-12(f)(6)(D) and (E) and 252:730 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if not more than 1 sample concentration or not more than 10% of the sample concentrations

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from the waterbody exceeds the chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 252:730-5-12(f)(6)(D), (E) and 252:730 Appendix G, Table 2.

(2) **Test for Non-Support.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than one of the sample concentrations from the waterbody exceed the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 252:730-5-12(f)(6)(D) and (E) and 252:730 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than 10 % of the sample concentrations from the waterbody exceed chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 252:730-5-12(f)(6)(D) and (E) and 252:730 Appendix G, Table 2

(d) **pH.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to pH occurring other than by naturally occurring conditions if no more than 10% of the sample concentrations from that waterbody fall outside the criteria range prescribed in 252:730-5-12(f)(3).

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to pH occurring other than by naturally occurring conditions if greater than 10% of the sample concentrations from that waterbody fall outside the criteria range prescribed in 252:730-5-12(f)(3).

(e) **Turbidity.** The criteria for turbidity stated in 252:730-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default protocol in 252:740-15-4(b).

(f) **Oil and grease.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations.

(g) **Suspended and bedded sediments.**

(1) If a stream is supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then that stream will be deemed to be supporting its assigned Fish and Wildlife Propagation beneficial use with respect to suspended and bedded sediments.

(2) If a stream is not supporting the biological criteria assigned to that stream as provided in (e) and (i) through

(n) of this section, then a habitat assessment must be conducted using the habitat assessment protocols found in OWRB Technical Report TRWQ2001-1, "Unified Protocols for Beneficial Use Assignment for Oklahoma Wadable Streams." The results of the habitat assessment shall then be compared to either historical conditions or regional reference conditions in order to determine attainment with respect to suspended and bedded sediments in that stream.

(3) The method for establishing reference conditions shall meet the following requirements:

(A) a minimum of five (5) reference streams or reaches shall be assessed;

(B) all of the reference streams or reaches must be within the same ecoregion as the test stream;

(C) all of the reference streams or reaches must be streams with similar flow regimes no more than two (2) stream orders removed from the test stream; and

(D) the reference streams shall be selected from the least impacted streams in the ecoregion whose watersheds contain soils, vegetation, land uses, and topography typical of the watershed of the test stream(s).

(4) The Fish and Wildlife Propagation beneficial use will be considered to be not supported with respect to suspended and bedded sediments if any of the following habitat parameters deviate from the reference conditions by the specified amount:

(A) The total percent of clay, silt, and loose sand in the pool bottom substrate of the test stream is increased by more than 30% over the reference condition;

(B) Cobble embeddedness in the test stream is increased by 15% or more over the reference condition;

(C) The percentage of the length of the reach containing fresh (non-vegetated) point bars and/or islands in the test stream is 20 or more percentage points above that of the reference condition; or

(D) The percentage of the length of the reach dominated by pools of a depth of 0.5 meters or more in the test stream is less than 70% of that of the reference condition.

(5) If all of the habitat parameters identified in (h)(4) of this section deviate from the reference conditions by less than the amounts specified in (h)(4) of this section, then the Fish and Wildlife Propagation beneficial use is not impaired due to suspended and bedded sediments.

(h) **Metals.** The Fish and Wildlife Propagation beneficial use designated for a waterbody may be assessed using either total recoverable or dissolved metals. When available, the concentrations of dissolved metals shall be compared following the provisions of (c) of this subsection to the criteria in OAC 252:730 Appendix G converted to dissolved criteria by multiplying the total metal criterion listed in table 2 by the appropriate conversion factor listed in Table 3. Preference shall be given to the beneficial use determinations based upon dissolved metals. For those metals criteria requiring a hardness component, individual assessment results may be calculated using the average of all hardness data meeting the requirements

of OAC 252:740-15-3. The segment-averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site-specific data to determine stream hardness.

(i) Biological criteria.

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 252:730-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 252:730 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.

(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".

(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma, Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.

(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (i) through (o), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made. A finding of impairment for biocriteria due to any one of the parameters listed in this section shall trigger an evaluation of all likely causes, not precluding monitoring, assessment, and subsequent support determination of the Fish and Wildlife beneficial use for any of the other parameters in this section

(j) Special provisions for Ouachita Mountains wadable streams. The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Ouachita Mountains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or

less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(k) Special provisions for Arkansas Valley wadable streams. The determination of whether the use of Fish and Wildlife Propagation is supported for wadable /streams located in the Arkansas Valley ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(l) Special provisions for Boston Mountains and Ozark Highlands wadable streams. The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Boston Mountains and Ozark Highlands ecoregions shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 37 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 29 or less. If a score is 30 to 36 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 31 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 30 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(m) Special provisions for Central Irregular Plains wadable streams. The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Central Irregular Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 28 or less. If a score is 29 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

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(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 30 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 29 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(3) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 25 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 16 or less. If a score is 17 to 24 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(n) Special provisions for Central Oklahoma - Texas Plains wadable streams. The determination of whether the Warm Water Aquatic Community subcategory of the Fish and Wildlife Propagation beneficial use is supported for wadable streams located in the Central Oklahoma - Texas Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Such subcategory shall be deemed fully supported if the application of Appendix C produces a score of 26 or more.

(2) Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 19 or less.

(3) If the application of Appendix C produces a score of 20 to 25 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(o) **Special provisions for Central Great Plains wadable streams.** The subcategory of Warm Water Aquatic Community of the beneficial use of Fish and Wildlife Propagation in the wadable streams located in the Central Great Plains ecoregion shall be deemed fully supported if the application of Appendix C of this Chapter produces a score of 22 or more. Such subcategory shall be deemed not supported for the streams in the ecoregion of the application of Appendix C produces a score of 18 or less. If the application of Appendix C produces a score of 19 to 21 inclusive, the issue of whether this subcategory is supported for the streams in this ecoregion shall be deemed undermined. Provided, however, this subsection does not apply to the area bounded by State Highway 54 on the west, U.S. Highway 62 on the south, U.S. Highway 281 on the east and State Highway 19 on the north.

252:740-15-6. Assessment of Primary Body Contact Recreation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the subcategory of Primary Body Contact of the beneficial use of Recreation designated in OAC 252:730 for a waterbody is supported during the recreation season from May 1 through September 30 each year. Where data exist for multiple bacterial indicators on the same waterbody or waterbody segment, the determination of use support shall be based upon the use and application of all applicable tests and data.

(b) **Escherichia coli (*E.coli*).**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is met. These values are based upon all samples collected over the recreation period in accordance with OAC 252:740-15-3(c).

(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is not met. These values are based upon all samples collected over the recreation period in accordance with OAC 252:740-15-3(c).

(c) **Enterococci.**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is met. These values are based upon all samples collected over the recreation period in accordance with OAC 252:740-15-3(c).

(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is not met. These values are based upon all samples collected over the recreation period in accordance with OAC 252:740-15-3(c).

252:740-15-7. Assessment of Public and Private Water Supply support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Public and Private Water Supply or any subcategory thereof designated in OAC 252:730 for a waterbody is supported.

(b) **Toxicants.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any substance with criteria for such use listed in OAC 252:730 Appendix G if the sample concentrations from that waterbody do not exceed the criterion for that substance prescribed in OAC 252:730 Appendix G more than 10% of the measurements, or drinking water use restrictions are not in effect.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to any substance with criteria for such use listed in OAC 252:730 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in OAC 252:730 Appendix G more than 10% of the measurements, or drinking water use restrictions imposed by an agency with jurisdiction in effect require closure of the water supply.

(c) **Bacteria.** The screening level for total coliform bacteria shall be 5000 colonies per 100 ml. The tests for use support shall follow the default protocol in 252:740-15-4.

(d) **Threatened water supplies.** Waters of the state designated in OAC 252:730 as Public and Private Water Supply shall be presumed to be threatened when toxicants are detected but do not exceed the applicable criteria prescribed in OAC 252:730 Appendix G, or some drinking water use restrictions

have been put into effect by an agency with jurisdiction, or the potential for adverse impacts to water quality exists, or more than one such conditions exist.

(e) Oil and grease.

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations, and drinking water use restrictions that require more than conventional treatment related to oil and grease have not been put into effect by an agency with jurisdiction.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations, or drinking water use restrictions that require more than conventional treatment related to oil and grease have been put into effect by an agency with jurisdiction.

252:740-15-8. Assessment of Agriculture support

(a) Scope. The provisions of this Section shall be used to determine whether the beneficial use of Agriculture designated in OAC 252:730 for a waterbody is supported.

(b) General support tests for chlorides, sulfates and TDS.

(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to chloride if the mean of all chloride sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730.

(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to chloride if the mean of all chloride sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730. Provided, if the chloride sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to chloride.

(3) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix

F or site-specific criteria promulgated in Appendix E of OAC 252:730.

(4) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730. Provided, if the sulfate sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to sulfate.

(5) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730.

(6) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site-specific criteria promulgated in Appendix E of OAC 252:730. Provided, if the TDS sample concentrations are each less than 700 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to TDS.

(c) Use of site-specific data. If the appropriate state environmental agency determines that the stream segment averages prescribed in Appendix F of OAC 252:730 are not appropriate for the entirety of a given stream segment or there is no value listed in Appendix F or site-specific criteria promulgated in Appendix E for the stream segment average for the parameter of concern, then yearly mean standards and sample standards developed from site-specific data may be used to assess whether the use of Agriculture is supported for that waterbody.

(d) Use of data for lakes.

(1) **Lakes with one WBID segment.** For support assessment in lakes with a single WBID segment, the segment averaged value prescribed in Appendix F to that same WQM segment shall be used.

(2) **Lakes with multiple WBID segments.** For support assessment in lakes with multiple WBID segments, each segment shall use the segment averaged value prescribed in Appendix F to that same WQM segment when available. If a WBID segment in a lake has no corresponding WQM segment data available in Appendix F, the segment averaged value prescribed in Appendix F to the

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WQM segment immediately downstream of the lake shall be used.

252:740-15-9. Assessment of Fish Consumption support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish Consumption designated in OAC 252:730 for a waterbody is supported.

(b) **Support tests.**

(1) The Fish Consumption beneficial use designated for a waterbody shall be deemed to be partially supported if restricted consumption as imposed by an agency with jurisdiction is in effect or if a fish or shellfish ban is in effect for a sub-population thereof.

(2) The Fish Consumption beneficial use designated for a waterbody shall be deemed to be not supported if an aquatic life closure or if a "no consumption" advisory imposed by an agency with jurisdiction is in effect.

(3) The water column criteria for protection of the Fish Consumption beneficial use stated in OAC 252:730 Appendix G Table 2 shall be used according to the default protocol in OAC 252:740-15-4(c) to determine use support.

252:740-15-10. Nutrients

(a) **General.** OAC 252:730-3-2(c) prohibits water quality degradation by nutrients which will interfere with the attainment or maintenance of any existing or designated beneficial use. OAC 252:740-13-3(a)(1) requires maintenance of any existing or designated beneficial use. This Section provides a framework which shall be used in assessing threats or impairments to beneficial uses and waterbodies and watersheds caused by nutrients, and the consequences of such assessments.

(b) **Determining whether a stream is nutrient-threatened.** The dichotomous process stated in this subsection shall be used in the determination of whether a stream is nutrient-threatened.

(1) The stream order shall be identified. If the stream order is 1, 2 or 3, then proceed to paragraph (2). If the stream order is not 1, 2 or 3, then proceed to paragraph (9).

(2) The stream slope shall be identified. If the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (3). If the stream slope is less than 17 feet per mile, then proceed to paragraph (4).

(3) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.24 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 4.95 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(4) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.15 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 2.4

mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(5) Subject to the application of the foregoing paragraphs of this subsection, if the percentage of canopy shading is greater than or equal to 80%, then the stream is not threatened by nutrients. If the percentage of canopy shading is less than 80%, then proceed to paragraph (6).

(6) Subject to the application of the foregoing paragraphs of this subsection, if the stream's turbidity is organic, then proceed to paragraph (7). If the stream's turbidity is inorganic, then proceed to paragraph (8).

(7) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is not threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is threatened by nutrients.

(8) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is not threatened by nutrients.

(9) Subject to the application of the foregoing paragraphs of this subsection, if the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (10). If the stream slope is less than 17 feet per mile, then proceed to paragraph (11).

(10) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 1.00 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 4.65 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(11) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.36 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 5.0 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(12) Subject to the application of the foregoing paragraphs of this subsection, if the stream's inorganic turbidity measured at seasonal base flow conditions is greater than or equal to 20 NTU, then the stream is not threatened by nutrients. If the stream's inorganic turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened.

(c) **Alternative to dichotomous process for streams.**

(1) A wadable stream shall be deemed threatened by nutrients if the arithmetic mean of benthic chlorophyll-a data exceeds 100 mg per square meter under seasonal base flow conditions, or if two or more benthic chlorophyll-a measurements exceed 200 mg per square meter under seasonal base flow conditions. A non-wadable stream shall

be deemed threatened by nutrients if planktonic chlorophyll-a values in the water column indicate it has a Trophic State Index (TSI) of 62 or greater.

(2) If clear and convincing evidence indicates a result for a stream different from that obtained from application of the dichotomous process in (b) of this Section, then the appropriate state environmental agency may, after completing the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101, accordingly identify the stream as threatened or not threatened by nutrients.

(d) Demonstration that nutrients may be adversely impacting a beneficial use. If it is demonstrated by the Trophic State Index or by other relevant data as provided in OAC 252:740-15-1(c) that nutrient loading in a waterbody may be adversely impacting a beneficial use designated for that waterbody, then DEQ may determine that the waterbody and its watershed is an NLW, and shall identify the waterbody and watershed as NLW in Appendix A of OAC 252:730.

(e) Consequence of identification as NLW. If a waterbody or its watershed is identified as NLW in Appendix A of OAC 252:730, then DEQ or other appropriate state environmental agency may cause an impairment study to be performed. Provided, if an impairment study demonstrates that the uses are not threatened, then DEQ shall consider deleting the NLW identification.

(f) Consequence of assessment that use is threatened by nutrients. If it is determined that one or more beneficial uses designated for a waterbody are threatened by nutrients, then that waterbody shall be presumed to be nutrient-threatened. If it is determined or presumed, in accordance with this Section, that a waterbody is nutrient-threatened, then before the waterbody is determined to be nutrient-impaired, an impairment study must be completed by the appropriate state environmental agency.

(g) **Result of impairment study.**

(1) **Impaired.** If, independent of or in addition to the process set forth in this Section, an impairment study of a waterbody demonstrates that any beneficial use designated for a waterbody is impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate listing procedure in accordance with the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101 for each such beneficial use.

(2) **Not impaired.** If, independent of or in addition to the process set forth in this Section, an impairment study of a waterbody demonstrates that all beneficial uses designated for that waterbody are not impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate de-listing procedure in accordance with the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

252:740-15-11. Assessment of Navigation support

The beneficial use of Navigation designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.

252:740-15-12. Assessment of Aesthetics support

(a) **General provisions for all waterbodies other than Scenic Rivers.** The tests prescribed in OAC 252:740-15-4 may be used to determine whether the beneficial use of Aesthetics designated in OAC 252:730 for a waterbody other than the Scenic Rivers is supported.

(b) **Special provisions for Scenic River reaches of Mountain Fork River, Lee Creek and Little Lee Creek.**

(1) **Scope and applicability.** This subsection shall be used to determine whether the Aesthetics beneficial use designated in OAC 252:730 is supported with respect to the total phosphorus criterion for Mountain Fork River, Lee Creek and Little Lee Creek.

(2) **Data and procedure.**

(A) The data used shall satisfy all of the requirements of 252:740-15-3 except subsection (f) thereof. Notwithstanding such requirements, the data shall include samples collected from stream flow of at least six (6) storm events per calendar year or, if fewer than nine (9) storm events occurred in that year, then the majority of the storm events that occurred that year.

(B) Whenever multiple samples are taken from a single storm event, the event mean concentration shall be determined and used as representative of that storm event.

(C) A three-calendar-month geometric mean concentration shall be determined each month using the total phosphorus data from that month together with such data from the preceding two calendar months.

(3) **Support tests.**

(A) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be supported with respect to total phosphorus if less than 25% of the monthly determinations made in accordance with (b)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

(B) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be not supported with respect to total phosphorus if 25% or greater of the monthly determinations made in accordance with (b)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

(c) **Special provisions for Scenic River reaches of Illinois River, Flint Creek, and Barren Fork Creek.**

(1) **Scope and applicability.** This subsection shall be used to determine whether the Aesthetics beneficial use designated in OAC 252:730 is supported with respect to the total phosphorus criterion for Illinois River, Flint Creek, and Barren Fork Creek.

(2) **Data and procedure.**

(A) The data used must satisfy all the requirements of 252:740-15-3, unless otherwise specified in this subsection.

(B) A rolling 6-month arithmetic mean must be calculated based on data from the current month and the five (5) preceding months. The calculation of a rolling 6-month arithmetic mean must include at least four values from four separate months. All available

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individual data values from any given month must be included in the rolling 6-month arithmetic mean calculation.

(C) A minimum of ten (10) rolling 6-month arithmetic means are required to assess the Aesthetic beneficial use within a one-year period. The minimum of ten (10) rolling 6-month arithmetic means shall not be required upon affirmation that the beneficial use is not supported per of 252:740-5-14(c)(3)(B).

(D) A minimum of thirty (30) rolling 6-month arithmetic means are required to assess the Aesthetic beneficial use within a five-year period. The minimum of thirty (30) rolling 6-month arithmetic means shall not be required upon affirmation that the beneficial use is not supported per of 252:740-5-14(c)(3)(B).

(3) Support Tests.

(A) If no more than one rolling 6-month arithmetic mean in any one-year period and not more than three rolling 6-month arithmetic means in any 5-year period exceed the total phosphorus criterion magnitude of 0.037 mg/L, the Aesthetic beneficial use is supported.

(B) If more than one rolling 6-month arithmetic mean in any one-year period or more than three rolling 6-month arithmetic means in any 5-year period exceed the total phosphorus criterion magnitude of 0.037 mg/L, the Aesthetic beneficial use is not supported.

SUBCHAPTER 17. IMPLEMENTATION OF DISSOLVED OXYGEN CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION

252:470-17-1. Applicability and scope

Rules in this Subchapter are designed to implement the criteria for dissolved oxygen prescribed in OAC 252:730 Appendix G Table 1 for protection of the beneficial use of Fish and Wildlife Propagation.

252:740-17-2. Regulatory flows

(a) The flow in the receiving stream, Q_{10} , shall be deemed to be the greater of the 7Q2 or 1 cfs. If the 7Q2 is unknown, then Q_{10} shall be deemed to be 1 cfs.

(b) For industrial dischargers with adequate data as determined by the permitting authority, the effluent flow, Q_e , shall be deemed to be the highest monthly averaged flow over the previous two years. For all other discharges, the effluent flow shall be deemed to be the design flow.

(c) Provided, in stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, including but not limited to the portions of the Verdigris and Arkansas Rivers constituting the McClellan-Kerr Arkansas River Navigation System, the appropriate regulatory low flow in the receiving stream, Q_{10} , shall be as determined on a site-specific basis pursuant to properly designed and implemented hydrologic study approved by the permitting authority and DEQ.

252:740-17-3. Reasonable potential determination

(a) A permit limit for oxygen demanding substances is required if there is a reasonable potential that the dissolved oxygen criteria will not be satisfied. Such a reasonable potential is demonstrated whenever an existing discharger proposes to increase the concentration or load of oxygen demanding substances, a new discharge of oxygen demanding substances is created, or a receiving waterbody is reclassified to a subcategory of the Fish and Wildlife Propagation beneficial use with a more stringent dissolved oxygen criterion.

(b) The permitting authority may base its determination of the reasonable potential upon meeting the dissolved oxygen standard at the applicable regulatory low flow and at the applicable seasonal temperatures prescribed in Table 1 of Appendix G of OAC 252:730.

APPENDIX A. [RESERVED]

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APPENDIX B. MEAN HARDNESS (CaCO₃) AND PH BY STREAM SEGMENT [NEW]

SEGMENT	MEAN pH	MEAN HARDNESS
120400	7.87	197.40
120410	8.02	262.00
120420	7.77	267.83
121300	7.50	153.00
121400	7.62	170.41
121500	7.47	162.38
121510	7.67	186.00
121600	7.52	169.27
121610	7.40	133.65
121700	7.46	106.55
220100	6.96	25.76
220200	7.74	165.00
220600	7.66	253.48
250510	7.81	294.00
310800	7.89	532.00
310810	7.90	756.44
310830	7.84	924.35
310840	7.96	1137.00
311100	7.86	593.20
311200	7.78	532.94
311210	7.67	470.00
311300	7.65	268.33
311310	7.77	296.00
311500	8.04	838.12
311510	7.95	1041.00

SEGMENT	MEAN pH	MEAN HARDNESS
311600	7.95	1540.00
311800	7.81	2095.00
331510	8.03	1147.00
410200	6.82	32.00
410210	6.89	18.76
410300	7.17	28.42
410400	7.62	192.98
410600	7.84	234.00
520500	7.97	282.00
520520	7.70	344.00
520530	8.07	454.43
520600	8.04	380.00
520610	8.22	442.00
520620	8.08	612.00
520700	7.82	276.16
520710	7.80	272.00
520800	7.69	332.99
620900	8.10	506.01
620910	7.85	802.56
620920	7.99	1297.07
621000	8.08	512.06
621010	8.02	865.00
621100	7.80	367.00
621200	7.83	264.55
720500	8.16	622.00

APPENDIX C. INDEX OF BIOLOGICAL INTEGRITY [NEW]

		5	3	1	SCORE
Sample Composition	Total no. of species	See figure 1			
	Shannon's diversity* based upon numbers	>2.50	2.49-1.50	<1.50	
	No. of sunfish species	>3	2-3	<2	
	No. of species comprising 75% of sample	>5	4-3	<3	
	No. of intolerant species <100mi ² area >100mi ² area	>5	3-5	<3	
		See figure 2			
	Percentage of tolerant species	See figure 3			
Fish Condition	Percentage of lithophils	>36	18-36	<18	
	Percentage of DELT anomalies**	<0.1	0.1-1.3	>1.3	
	Fish numbers (total individuals)	>200	200-75	<75	

$$* d = - \sum \frac{n_i}{N} \ln \frac{n_i}{N}$$

** DELT = deformities, eroded fins, lesions, tumors

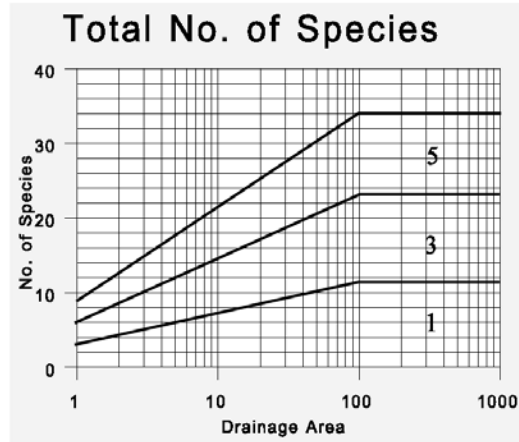


FIGURE 1. Total No. of Species

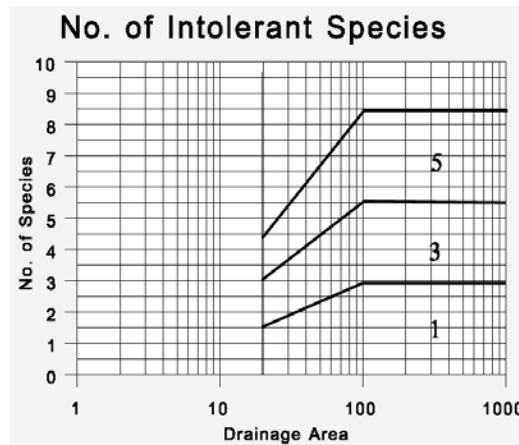


FIGURE 2. No. of Intolerant Species

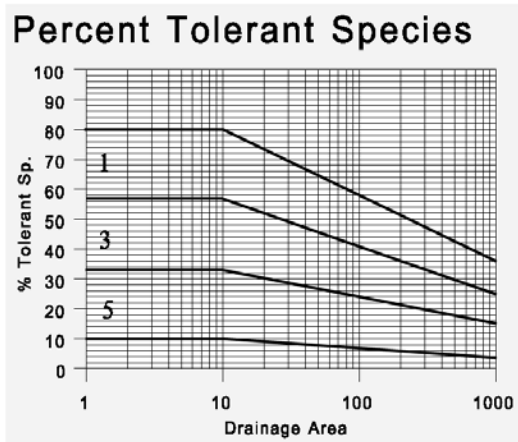


FIGURE 3. Percent Tolerant Species

[OAR Docket #22-781; filed 10-27-22]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 135. SERVICE OKLAHOMA

[OAR Docket #22-802]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Administrative Operations [NEW]
Subchapter 5. Driver Licenses and Identification Cards [AMENDED]

AUTHORITY:

Service Oklahoma, a division of the Office of Management and Enterprise Services; 47 O.S. Section 3-101; The Director of Service Oklahoma; 47 O.S. Section 3-103; The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. Section 34.6(8).

ADOPTION:

September 19, 2022

EFFECTIVE:

November 1, 2022

APPROVED BY GOVERNOR:

October 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

These rules are necessary to comply with deadlines set forth in Service Oklahoma's governing law. Service Oklahoma was created on May 19, 2022 with the enactment of HB3419. The applicable powers, duties, and responsibilities exercised by the Driver License Services Division of the Department of Public Safety shall be fully transferred to Service Oklahoma on November 1, 2022 and the applicable powers, duties, and responsibilities exercised by the Motor Services Division of the Oklahoma Tax Commission shall be fully transferred to Service Oklahoma on January 1, 2023.

GIST/ANALYSIS:

These rules create new rules related to the Administrative Operations of Service Oklahoma. HB3419 transferred the existing applicable rules from the Department of Public Safety to Service Oklahoma and those transfers have been completed. However, the rules have remaining references to the Department of Public Safety that need to be changed to Service Oklahoma. These proposed rules make the reference changes required by the passage of HB3419 to transfer the applicable powers, duties, and responsibilities exercised by the Driver License Services Division of the Department of Public Safety to Service Oklahoma.

CONTACT PERSON:

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DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT SERVICE OKLAHOMA, 6015 N. CLASSEN BLVD., BUILDING FOUR, OKLAHOMA CITY, OK 73118 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

These rules are necessary to comply with deadlines set forth in Service Oklahoma's governing law. Service Oklahoma was created on May 19, 2022 with the enactment of HB3419. The applicable powers, duties, and

responsibilities exercised by the Driver License Services Division of the Department of Public Safety shall be fully transferred to Service Oklahoma on November 1, 2022 and the applicable powers, duties, and responsibilities exercised by the Motor Services Division of the Oklahoma Tax Commission shall be fully transferred to Service Oklahoma on January 1, 2023.

[OAR Docket #22-802; filed 11-1-22]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #22-864]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Soonercare
Part 1. General Provisions
317:25-7-5 [AMENDED]
(Reference APA WF # 22-15)

AUTHORITY:

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

ADOPTION:

September 21, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of revisions to its current policy in order to protect the public health, safety, or welfare. Currently, policy places member caps on physicians, advanced practice registered nurses, and physician assistants. The proposed changes would remove the member caps and allows providers to take on more members, thus increasing members' access to care.

GIST/ANALYSIS:

These emergency revisions are necessary to remove member cap limits from Agency policy for Physicians, Advanced Practice Registered Nurses (APRN), and Physician Assistants (PA) participating in SoonerCare Choice as a Patient Centered Medical Home (PCMH) provider. Current policy allows 2,500 members for each physician, 1,250 members for each APRN, and 1,250 members for each PA. The proposed revisions make access to care easier for members and aligns policy with the current redesign of the PCMH model.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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 7. SOONERCARE PART 1. GENERAL PROVISIONS

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317:25-7-5. Primary care providers (PCPs)

For provision of health care services, the OHCA contracts with qualified PCPs. All providers serving as PCPs must have a valid SoonerCare Fee-for-Service contract as well as an exercised SoonerCare Choice addendum. Additionally, all PCPs, excluding provider or physician groups must agree to accept a minimum capacity of fifty (50) patients; provided, however, this does not guarantee PCPs a minimum patient volume. PCPs are limited to:

(1) **Physicians.** Any physician licensed to practice medicine in the state in which he or she practices who is engaged in a general practice or in family medicine, general internal medicine or general pediatrics may serve as a PCP. Out-of-state PCPs are required to comply with all access standards imposed on Oklahoma physicians, as well as Oklahoma Administrative Code (OAC) 317:30-3-89 through 317:30-3-92.

~~(A) For physicians serving as SoonerCare Choice PCPs, the State caps the number of members per physician at two thousand, five hundred (2,500). If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed one (1) FTE. Thus, the physician cannot exceed a maximum total capacity of two thousand, five hundred (2,500) members.~~

~~(B) In areas of the state where cross state utilization patterns have developed because of limited provider capacity in the state the OHCA may authorize contracts with out of state providers for PCP services. Out of state PCPs are required to comply with all access standards imposed on Oklahoma physicians, as well as Oklahoma Administrative Code (OAC) 317:30-3-89 through 317:30-3-92.~~

(2) **Advanced Practice Registered Nurses (APRNs).** APRNs who have prescriptive authority may serve as PCPs for the Primary Care Case Management delivery system if licensed to practice in the state in which he or she practices. ~~APRNs who have prescriptive authority may serve as PCPs for a maximum number of one thousand, two hundred and fifty (1,250) members.~~

(3) **Physician Assistants (PAs).** PAs may serve as PCPs if licensed to practice in the state in which he or she practices. ~~PAs may serve as PCPs for a maximum number of one thousand, two hundred and fifty (1,250) members.~~

(4) **Indian Health Service (IHS) Facilities and Federally Qualified Health Center (FQHC) provider groups and Rural Health Clinics (RHC).**

(A) IHS facilities whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements at OAC 317:30-5-1088 may serve as PCPs.

(B) FQHCs whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements in OAC 317:30-5-660.2 may serve as PCPs.

(C) RHCs whose professional staff meet the general requirements in paragraphs (1) through (3) of this

Section and the provider participation requirements in OAC 317:30-5-355 may serve as PCPs.

(5) **Provider or physician group capacity and enrollment.**

(A) Provider or physician groups must agree to accept a minimum enrollment capacity ~~and may not exceed two thousand, five hundred (2,500) members per physician participating in the provider group of fifty (50) members.~~

~~(B) If licensed PAs or APRNs are members of a group, the capacity may be increased by one thousand, two hundred and fifty (1,250) members if the provider is available full time.~~

(C) Provider or physician groups must designate a medical director to serve as the primary contact with OHCA.

[OAR Docket #22-864; filed 11-8-22]

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

[OAR Docket #22-865]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-35 [AMENDED]
(Reference APA WF # 22-16)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and Senate Bill 1369

ADOPTION:

September 21, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to implement changes in state law at 63 O.S. 2021, Section 1-133 due to passage of Oklahoma Senate Bill No. 1369, in order to implement changes to the Oklahoma statewide Health Information Exchange (HIE). The proposed revisions include repealing all previously approved language; adding the Office of the State Coordinator for HIE; designating that the Office of the State Coordinator for HIE will oversee the state-designated entity for HIE; and revising the definition of "health information exchange organization" to indicate that it is an organization governed by its stakeholders. Additional revisions will state that beginning July 1, 2023, all qualified health care providers, as defined by OHCA rules and who are licensed by and located in Oklahoma, shall be actively engaged with the HIE in the onboarding process of connecting to the HIE in order to meet the legislative requirement to report data to and utilize the state-designated entity for HIE.

GIST/ANALYSIS:

These emergency revisions are necessary to comply with OK Senate Bill 1369 which changed the statewide HIE. The revisions include repealing all previously approved language; adding the Office of the State Coordinator for HIE; designating that the Office of the State Coordinator for HIE will oversee the state-designated entity for HIE; and revising the definition of "health information exchange organization" to indicate that it is an organization governed by its stakeholders. Additional revisions will state that beginning July 1, 2023, all qualified health care providers, as defined by OHCA rules and who are licensed by and located in Oklahoma, shall be actively engaged with the HIE in the onboarding process of connecting to the HIE. This ensures that the legislative requirement of data reporting capabilities and utilizing the state-designated entity for HIE are met.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-35. ~~Oklahoma State Health Information Network and Exchange (OKSHINE)~~ Statewide Health Information Exchange

(a) **Authority.** This rule is promulgated under the authority granted in Title 63 of the Oklahoma Statutes Section 1-133 (63 O.S. § 1-133). This Section is intended to be read in conjunction with applicable Oklahoma statutes and federal law.

(b) **Applicability and purpose.**

(1) **Applicability.** This section shall apply to and govern the establishment and operation of the statewide health information exchange (HIE), ~~herein referred to as OKSHINE.~~

(2) **Purpose.** ~~OKSHINE is the state designated organization that facilitates the exchange of health information to and from authorized individuals and health care organizations in the state for the purpose of improving health outcomes, as per 63 O.S. § 1-133. The Office of the State Coordinator for HIE is the office within the Oklahoma Health Care Authority (OHCA) that holds the power and duty to oversee the state-designated entity for health information exchange, as described under 63 O.S. § 1-133.~~

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

(1) ~~"OKSHINE" means an organization that oversees, governs, and facilitates health information exchange among health care providers that are not related health care organizations as defined in the Oklahoma Statutes, to~~

~~improve the security of patient information, coordination of patient care, and the efficiency of health care delivery.~~

(2) ~~"Participant" means an organization, health care practitioner or institution, health plan, or health care clearinghouse who has executed a written participation agreement (PA) and business associate agreement (BAA) with OKSHINE.~~

(3) ~~"Participant agreement" means the agreement between OKSHINE and a participant which authorizes the participant to have access to OKSHINE and outlines the policies and procedures for access, protection, and use of the electronic protected health information.~~

(4) ~~"Oklahoma Statewide Health Information Exchange (OKHIE)" means a certified HIE as referenced in 63 O.S. § 1-133 whose primary business activity is health information exchange.~~

(1) "Health care provider" means the following individuals and organizations who are licensed pursuant to the laws of the State of Oklahoma and includes organizations who employ or contract with such licensed individuals for the purpose of providing services associated with their licenses to residents of Oklahoma:

(A) A hospital or related institution licensed pursuant to 63 O.S. § 1-702;

(B) Nursing facilities licensed pursuant to 63 O.S. § 1-1903;

(C) Doctors as specified in 59 O.S. § 725.2, subsection A, paragraphs 1 through 9;

(D) Physical therapists as specified in 59 O.S. § 887.2, paragraph 3;

(E) Physician assistants as specified in 59 O.S. § 519.2, paragraph 5;

(F) Pharmacists as specified in 59 O.S. § 353.1, paragraph 15;

(G) Nurses as specified in 59 O.S. § 567.3a, paragraphs 3 through 10;

(H) Licensed Mental Health Professionals as specified in 43a O.S. § 1-103; and

(I) Home Health Care Agencies and/or providers licensed pursuant to 63 O.S. § 1-1965.

(2) "Health care provider organization" means the legal entity that offers the services of health care providers to patients in Oklahoma.

(3) "Report data to" means that health care providers shall establish a direct, secure connection to the state designated entity for HIE and submit data in the form and format as defined on the Office of the State Coordinator for HIE website.

(4) "State designated entity (SDE)" means the health information exchange organization designated by the State of Oklahoma under 63 O.S. § 1-133. The name and contact information for the state designated entity for HIE is found on the Office of the State Coordinator for HIE website.

(5) "Utilize" means to actively use the HIE services to securely access records during and/or in support of patient treatment or health care operations.

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~~(d) **OKHIE Certification.** Per 63 O.S. § 1-133, an initial certification and an annual recertification will be required for health information exchanges to qualify as an OKHIE. In order to receive certification, the applying HIE must submit an application to the Oklahoma Health Care Authority (OHCA) and provide all requested documentation. The application and standards for certification shall be posted on the OHCA OKSHINE public website.~~

~~(1) The OHCA shall establish a health information exchange certification with input from stakeholders.~~

~~(2) Until such time as the health information exchange certification is established by the OHCA, an OKSHINE or an HIE organization that was previously certified by the Oklahoma Health Information Exchange Trust (OHJET) shall be deemed an OKHIE.~~

~~(3) An HIE must provide documentation of certification from OHJET to OHCA in order to receive initial OKHIE certification.~~

~~(e) **Fees.**~~

~~(1) **Certification fees.** Each health information exchange which applies for certification, will be required to pay annual certification/recertification fees. The OHCA will develop the certification criteria and will publish the criteria and associated fees, when available, on the OHCA OKSHINE public website.~~

~~(2) **Participant fees.** Each participant, as defined in this section, will be required to pay an annual participation fee as outlined in the participant agreement. The OHCA will develop the criteria for the fees and will publish the criteria when available. The participant agreement and fee schedule will be posted on the OHCA OKSHINE public website.~~

~~(d) **Required participation.**~~

~~(1) By July 1, 2023, all health care providers as defined above and who are licensed by and located in the state of Oklahoma shall report data to and utilize the SDE.~~

~~(2) The state acknowledges that establishing the connection to the HIE can take substantial time to complete. A health care provider will be considered to have met the requirement to report data to the SDE as long as the provider is actively engaged with the HIE in the onboarding process of connecting to the HIE, and as reported by the SDE.~~

~~(3) In order to meet the requirement to utilize the SDE, each health care provider or their health care provider organization shall secure access to HIE services by the following:~~

~~(A) Completing and maintaining an active participation agreement with the SDE for HIE;~~

~~(B) Executing annually an order form electing at a minimum the set of core services relevant to the provider practice or organization; and~~

~~(C) Maintaining good standing as a participating organization in the SDE for HIE by remaining compliant with the terms and conditions, network policies and procedures, and paying all fees associated with the services elected on the order form.~~

~~(4) Each health care provider or health care provider organization will provide a utilization report from the SDE~~

to the Office of the State Coordinator for HIE on an annual basis. Utilization metrics and benchmarks will be determined annually by the Office of the State Coordinator for HIE in consultation with the board of directors of the SDE and will be published three (3) months prior to the commencement of each State Fiscal Year.

~~(e) **Hardship exemption.**~~

(1) The Office of the State Coordinator for HIE may allow exemptions from the requirement to report data to and utilize the SDE beginning July 1, 2023, on the basis of financial hardship, size, or technological capability of a health care provider or organization or such other bases as may be provided by rules promulgated by OHCA.

(2) Any health care provider or health care provider organization as defined above that believes they will fall under hardship in order to meet the requirements to report data to and utilize the SDE must submit a request for exemption providing detailed justification as to the hardship they will sustain as specified on the Office of the State Coordinator for HIE website.

(3) The authorization of a hardship exemption does not exclude the provider from having to meet the requirements to report data to and utilize the SDE but will provide additional time for the provider to mitigate their hardship in doing so.

[OAR Docket #22-865; filed 11-8-22]

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

[OAR Docket #22-867]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric and Substance Use Disorder Services
317:30-5-95 [AMENDED]

317:30-5-95.24 [AMENDED]

317:30-5-95.40 [AMENDED]

(Reference APA WF # 22-12)

AUTHORITY:

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

ADOPTION:

September 21, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its current inpatient psychiatric and substance use disorder services policy to protect the public health, safety, or welfare. The approval of the emergency rule will allow

out-of-state inpatient psychiatric providers the flexibility to utilize the staffing ratios and staff licensing requirements of the state in which the facility/provider is located.

GIST/ANALYSIS:

These emergency revisions are necessary to allow out-of-state inpatient psychiatric providers to utilize the staffing ratios and staff licensing requirements of the state in which the facility/provider is located.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC AND SUBSTANCE USE DISORDER SERVICES

317:30-5-95. General provisions and eligible providers

(a) **Eligible settings for inpatient psychiatric services.** The following individuals may receive SoonerCare-reimbursable inpatient psychiatric services in the following eligible settings:

- (1) Individuals under twenty-one (21) years of age, in accordance with OAC 317:30-5-95.23, may receive SoonerCare-reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, a psychiatric hospital, or a PRTF; and may receive chemical dependency detoxification/withdrawal management services in a psychiatric unit of a general hospital or in a psychiatric hospital.
- (2) Individuals ages twenty-one (21) and older may receive SoonerCare-reimbursable inpatient psychiatric and/or chemical dependency detoxification/withdrawal management services in a psychiatric unit of a general hospital or in a psychiatric hospital.

(b) **Psychiatric hospitals and psychiatric units of general hospitals.** To be eligible for payment under this Part, inpatient psychiatric programs must be provided to eligible SoonerCare members in a hospital that:

- (1) Is a psychiatric hospital that:
 - (A) Successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a psychiatric hospital per 42 C.F.R. § 482.60; or
 - (B) Is accredited by a national organization whose psychiatric accrediting program has been approved by CMS; or
- (2) Is a general hospital with a psychiatric unit that:
 - (A) Successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital as specified in 42 C.F.R. Part 482; or

(B) Is accredited by a national accrediting organization whose accrediting program has been approved by CMS; and

(3) Meets all applicable federal regulations, including, but not limited to:

- (A) Medicare Conditions of Participation for Hospitals (42 C.F.R. Part 482), including special provisions applying to psychiatric hospitals (42 C.F.R. § 482.60-.62);
- (B) Medicaid for Individuals Age 65 or over in Institutions for Mental Diseases (42 C.F.R. Part 441, Subpart C);
- (C) Inpatient Psychiatric Services for Individuals under Age 21 in Psychiatric Facilities or Programs (42 C.F.R. Part 441, Subpart D); and/or
- (D) Utilization Control [42 C.F.R. Part 456, Subpart C (Utilization Control: Hospitals) or Subpart D (Utilization Control: Mental Hospitals)]; and

(4) Is contracted with the OHCA; and

(5) If located within Oklahoma and serving members under eighteen (18) years of age, is appropriately licensed by the Oklahoma Department of Human Services (OKDHS) as a residential child care facility (10 O.S. §§ 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168.

(6) If located out of state, services must be provided within the licensure for each facility and scope of practice for each provider and supervising or rendering practitioner for the state in which the facility/provider is located. Services must be in compliance with the state-specific statutes, rules and regulations of the applicable practice act.

(c) **PRTF.** Every PRTF must:

- (1) Be individually contracted with OHCA as a PRTF;
- (2) Meet all of the state and federal participation requirements for SoonerCare reimbursement, including, but not limited to, 42 C.F.R. § 483.354, as well as all requirements in 42 C.F.R. 483 Subpart G governing the use of restraint and seclusion;

~~(3) Be appropriately licensed by OKDHS as a residential child care facility (10 O.S. § 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168;~~

- (3) Be appropriately licensed and/or certified:
 - (A) If an in-state facility, by OKDHS as a residential child care facility (10 O.S. § 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168; or
 - (B) If an out-of-state facility, by the licensing or certifying authority of the state in which the facility does business and must provide an attestation to OHCA that the PRTF is in compliance with the condition of participation for restraint and seclusion, as is required by federal law.

(4) Be appropriately certified by the State Survey Agency, the Oklahoma State Department of Health (OSDH) as meeting Medicare Conditions of Participation; and

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(5) Be accredited by TJC, the Council on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).

~~(d) **Out-of-state PRTF.** Any out-of-state PRTF must be appropriately licensed and/or certified in the state in which it does business, and must provide an attestation to OHCA that the PRTF is in compliance with the condition of participation for restraint and seclusion, as is required by federal law. Any out-of-state PRTF must also be accredited in conformance with OAC 317:30-5-95(e)(5).~~

(ed) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the OHCA's website.

317:30-5-95.24. Prior authorization of inpatient psychiatric services for individuals under twenty-one (21)

(a) All inpatient psychiatric services for members under twenty-one (21) years of age must be prior authorized by the OHCA or its designated agent. All inpatient Acute, Acute II, and PRTF services will be prior authorized for an approved length of stay. Admission requirements for services must be provided in accordance with 42 C.F.R. Part 441 and 456. Additional information will be required for SoonerCare-compensable approval on enhanced treatment units or in special population programs.

(b) Unit staffing ratios shall always meet the requirements in OAC 317:30-5-95.24 (c), (d), (h) and (i). Out-of-state facilities may adhere to the staffing requirements of the state in which the services are provided if the staff ratio is sufficient to ensure patient safety and that patients have reasonable and prompt access to services. The facility cannot use staff that is also on duty in other units of the facility in order to meet the unit staffing ratios. Patients shall be grouped for accommodation by gender, age, and treatment needs. At a minimum, children, adolescent, and adult treatment programs shall be separate with distinct units for each population. A unit is determined by separate and distinct sleeping, living, and treatment areas often separated by walls and/or doors. A unit that does not allow clear line of sight due to the presence of walls or doors is considered a separate unit. Each individual unit shall have assigned staff to allow for appropriate and safe monitoring of patients and to provide active treatment.

(c) In Acute and Acute II settings, at least one (1) registered nurse (RN) must be on duty per unit at all times, with additional RNs to meet program needs. RNs must adhere to Oklahoma State Department of Health (OSDH) policy at OAC 310:667-15-3 and 310:667-33-2(a)(3).

(d) Acute, non-specialty Acute II, and non-specialty PRTF programs require a staffing ratio of one (1) staff: six (6) patients during routine waking hours and one (1) staff: eight (8) patients during time residents are asleep with twenty-four (24) hour nursing care supervised by an RN for management of behaviors and medical complications. For PRTF programs, at a minimum, a supervising RN must be available by phone and on-site within one (1) hour. If the supervising RN is off-site, then an RN or licensed practical nurse (LPN) must be on-site to adhere to a twenty-four (24) hour nursing care coverage ratio of

one (1) staff: thirty (30) patients during routine waking hours and one (1) staff: forty (40) patients during time residents are asleep.

(e) Specialty treatment at Acute II or PRTF is a longer-term treatment that requires a higher staff-to-member ratio because of the need for constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician, Advanced Practice Registered Nurse (APRN) with psychiatric certification or Physician Assistant (PA) will see the child at least one (1) time a week.

(f) An Acute II or PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit.

(g) A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the members and must meet active treatment requirements found at OAC 317:30-5-95.34.

(h) Criteria for classification as a specialty Acute II will require a staffing ratio of one (1) staff: four (4) patients at a minimum during routine waking hours and one (1) staff: six (6) patients during time residents are asleep with twenty-four (24) hour nursing care supervised by a RN for management of behaviors and medical complications. The specialty Acute II will be a secure unit, due to the complexity of needs and safety considerations. Admissions and authorization for continued stay for a specialty Acute II will be restricted to members who meet the medical necessity criteria at OAC 317:30-5-95.29 and OAC 317:30-5-95.30 for the respective level of care and meet the additional criteria found in the Behavioral Health Services Medical Necessity Criteria Manual, available on OHCA's website, www.okhea.org www.oklahoma.gov/ohca.

(i) Criteria for classification as a specialty PRTF will require a staffing ratio of one (1) staff: four (4) patients at a minimum during routine waking hours and one (1) staff: six (6) patients during time residents are asleep with twenty-four (24) hour nursing care supervised by a RN for management of behaviors and medical complications. The specialty PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions and authorization for continued stay in a specialty PRTF will be restricted to members who meet the medical necessity criteria at OAC 317:30-5-95.29 and OAC 317:30-5-95.30 for the respective level of care and meet the additional criteria found in the Behavioral Health Services Medical Necessity Criteria Manual, available on OHCA's website, www.okhea.org www.oklahoma.gov/ohca.

(j) Non-authorized inpatient psychiatric services will not be SoonerCare compensable.

(k) For out-of-state placement policy, refer to OAC 317:30-3-89 through 317:30-3-92. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in active treatment, including discharge and reintegration planning. Out-of-state facilities are responsible for insuring appropriate medical care,

as needed under SoonerCare provisions, as part of the per-diem rate.

(l) Reimbursement for inpatient psychiatric services in all psychiatric units of general hospitals, psychiatric hospitals, and PRTFs are limited to the approved length of stay. OHCA, or its designated agent, will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria as described in OAC 317:30-5-95.25 through OAC 317:30-5-95.30. The approved length of stay applies to both facility and physician services.

317:30-5-95.40. Other required standards

The provider is required to maintain all programs and services according to applicable C.F.R. requirements, the Joint Commission¹ (TJC) and American Osteopathic Association² (AOA) standards for behavioral health care, Oklahoma State Department of Health's (OSDH) hospital standards for psychiatric care, and Oklahoma Department of Human Services³ (OKDHS) licensing standards for residential treatment facilities. PRTFs may substitute the Commission on Accreditation of Rehabilitation Facilities (CARF) accreditation in lieu of TJC or AOA accreditation. In addition to federal requirements, out-of-state inpatient psychiatric facilities must adhere to OAC 317:30-5-95 and 317:30-5-95.24.

[OAR Docket #22-867; filed 11-8-22]

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

[OAR Docket #22-869]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 17. Medical Suppliers

317:30-5-210 [AMENDED]

317:30-5-211.20 [AMENDED]

317:30-5-211.29 [NEW]

(Reference APA WF # 22-14)

AUTHORITY:

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

ADOPTION:

September 21, 2022

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Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of new rules to protect the public health, safety, or welfare by ensuring that human donor breast milk will be available for SoonerCare infants when deemed medically necessary by a

qualified provider. The newly added coverage of human donor breastmilk will benefit premature, ill, or failing to thrive infants by giving them a better chance to improve their health outcomes.

GIST/ANALYSIS:

These emergency revisions are necessary to add policy that will outline the criteria required to provide this new benefit. The new policy will address coverage, medical necessity, provider qualifications, and reimbursement for donor human breast milk. The approval of this emergency rule change will also prove to have a positive effect as the members will receive Medicaid coverage for pasteurize donor human milk and donor human milk-derived products in an inpatient or home setting for infants, when deemed medically necessary by a qualified provider. Additionally, it may benefit in situations such as adoption, foster care, a mother experiencing a physical/psychological condition, infants who may not be able to receive their own mother's breastmilk, etc.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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 5. INDIVIDUAL PROVIDERS
AND SPECIALTIES**

PART 17. MEDICAL SUPPLIERS

317:30-5-210. Eligible providers

All eligible medical suppliers must have a current contract with the Oklahoma Health Care Authority (OHCA). The supplier must comply with all applicable state and federal laws. All suppliers of medical supplies, equipment, and appliances must be accredited by a Medicare deemed accreditation organization for quality standards for durable medical equipment (DME) suppliers in order to bill the SoonerCare program. OHCA may make exceptions to this standard based on the exemptions provided by the Centers for Medicare and Medicaid Services (CMS) for Medicare accreditation, if the provider is a government-owned entity, or at a provider's request and at the discretion of OHCA based on access issues and/or agency needs for SoonerCare members. Additionally, unless an exception is granted from the OHCA, all DME providers must meet the following criteria:

- (1) DME providers are required to have a physical location in the State of Oklahoma, or within a designated range of the Oklahoma State border, as determined by the OHCA. The OHCA may make exceptions to this requirement if a DME provider provides a specialty item, product, or service, which is not otherwise available to SoonerCare members within the State of Oklahoma. Provider contracts for out-of-state DME providers will be reviewed on a case-by-case basis for specialty items only. The OHCA has discretion and the final authority to approve or deny any provider contract.
- (2) DME providers are required to comply with Medicare DME Supplier Standards for medical supplies, equipment, and appliances provided to SoonerCare members,

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except the requirement to meet surety bond requirements, as specified in 42 Code of Federal Regulations (C.F.R.) 424.57(c).

(3) Complex rehabilitation technology (CRT) suppliers are considered DME providers. Only CRT suppliers may bill CRT procedure codes. A CRT supplier means a company or entity that:

(A) Is accredited by a recognized accrediting organization as a supplier of CRT;

(B) Is an enrolled Medicare supplier and meets the supplier and quality standards established for DME suppliers, including those for CRT, under the Medicare program;

(C) Employs as a W-2 employee at least one (1) qualified CRT professional, also known as assistive technology professional, for each location to:

(i) Analyze the needs and capacities of complex-needs patients in consultation with qualified health care professionals;

(ii) Participate in selecting appropriate CRT items for such needs and capacities; and

(iii) Provide the complex-needs patient technology related training in the proper use and maintenance of the CRT items.

(D) Requires a qualified CRT professional be physically present for the evaluation and determination of the appropriate CRT;

(E) Has the capability to provide service and repair by qualified technicians for all CRT items it sells; and

(F) Provides written information to the complex-needs patient prior to ordering CRT as to how to access service and repair.

(4) For additional requirements regarding DME providers of donor human breast milk, please refer to OAC 317:30-5-211.29.

317:30-5-211.20. Enteral nutrition

(a) **Enteral nutrition.** Enteral nutrition is the delivery of nutrients directly into the stomach, duodenum, or jejunum.

(b) **Medical necessity.** Enteral nutrition supplies must be determined by a provider to be medically necessary and documented in the member's plan of care as medically necessary and used for medical purposes. Requests by qualified providers for enteral nutrition supplies in and of itself shall not constitute medical necessity. The Oklahoma Health Care Authority (OHCA) shall serve as the final authority pertaining to all determinations of medical necessity. Refer to Oklahoma Administrative Code (OAC) 317:30-5-211.2 and 317:30-3-1(f) for policy on medical necessity.

(c) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-3-1(f)(2). Documentation must include:

- (1) Diagnosis;
- (2) Certificate of medical necessity (CMN);
- (3) Ratio data;
- (4) Route;

(5) Caloric intake; and

(6) Prescription.

(7) For full guidelines, please refer to www.okhca.org/mau.

(d) **Reimbursement.**

(1) Extension sets and Farrell bags are not covered when requested separately from the supply kits;

(2) Enteral nutrition for individuals in long-term care facilities is not separately reimbursed as this is included in the per diem rate.

(e) **Non-covered items.** The following are non-covered items:

(1) Orally administered enteral products and/or related supplies;

(2) Formulas that do not require a prescription unless administered by tube;

(3) Food thickeners, ~~human breast milk~~, and infant formula;

(4) Pudding and food bars; and

(5) Nursing services to administer or monitor the feedings of enteral nutrition.

317:30-5-211.29. Donor human breast milk

(a) **Donor human breast milk.** Donor human breast milk is pasteurized donor human milk which has been donated to a Human Milk Banking Association of North America (HMBANA) milk bank. Upon donation, it is screened, pooled, and tested so that it can be dispensed. All donor mothers require screening and approval by a HMBANA milk bank, and additionally, all donor milk is logged, pasteurized, and monitored.

(b) **Provider qualifications.** Donor human breast milk must be obtained from a milk bank accredited by, and in good standing with, the HMBANA and be contracted with the Oklahoma Health Care Authority (OHCA) as a Durable Medical Equipment (DME) provider.

(c) **Medical necessity criteria.** To qualify to receive donor human breast milk the infant must meet medically necessary criteria, which can include but not limited to the following conditions:

(1) Other feeding options have been exhausted or are contraindicated; and

(2) Baby's biological mother's milk is contraindicated, unavailable due to medical or psychosocial condition, or mother's milk is available but is insufficient in quantity or quality to meet the infant's dietary needs, as reflected in medical records or by a physician (MD or DO), physician's assistant, or advanced practice nurse; and

(3) Donor human breast milk must be procured through a HMBANA entity and delivered through a contracted provider, facility, or the supplier (HMBANA-accredited milk bank); and

(A) Requests for coverage over thirty-five (35) ounces per day, per infant, shall require review and approval by an OHCA Medical Director; and

(B) Coverage shall be extended for as long as medically necessary, but not to exceed an infant's twelve (12) months of age; and

- (C) A new prior authorization will be required every ninety (90) days.
- (4) The infant has one (1) or more of the following conditions:
- (A) Infant born at Very Low Birth Weight (VLBW) (less than 1,500 grams) or lower; or
 - (B) Gastrointestinal anomaly, metabolic/digestive disorder, or recovery from intestinal surgery where digestive needs require additional support; or
 - (C) Diagnosed failure to thrive; or
 - (D) Formula intolerance with either documented feeding difficulty or weight loss; or
 - (E) Infant hypoglycemia; or
 - (F) Congenital heart disease; or
 - (G) Pre or post organ transplant; or
 - (H) Other serious health conditions where the use of donor human breast milk has been deemed medically necessary and will support the treatment and recovery of the infant as reflected in the medical records or by a physician (MD or DO), physician's assistant, or advanced practice nurse.
- (5) For full guidelines, including the medically necessary criteria, please refer to www.okhca.org/mau.
- (d) **Documentation.** All documentation submitted to request services must demonstrate, through adequate objective medical records, evidence sufficient to justify the member's need for the service, in accordance with OAC 317:30-5-211.20(c). Documentation must include:
- (1) A prescription from a contracted provider [a physician (MD or DO), physician's assistant, or advanced practice nurse]. The prescription must include but not limited to:
 - (A) Name of infant, address and diagnoses;
 - (B) Parent name and phone number or email;
 - (C) Donor human breast milk request form;
 - (D) Number of ounces per day, week, or month needed; and
 - (E) Prescriptions must be written on a prescription notepad and signed off by an authorized provider.
 - (F) For full guidelines, please refer to www.okhca.org/mau.
 - (2) Donor human breast milk is excluded from requiring a CMN.
- (e) **Reimbursement.** Donor human breast milk is reimbursed as follows:
- (1) When donor human breast milk is provided in the inpatient setting, it will be reimbursed within the prospective Diagnosis Related Group (DRG) payment methodology for hospitals as authorized under the Oklahoma Medicaid State Plan.
 - (2) When donor human breast milk is provided in an outpatient setting as a medical supply benefit, it will be reimbursed as a durable medical equipment, supplies, and appliances (DME) item in accordance the OHCA fee schedule.

[OAR Docket #22-869; filed 11-8-22]

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

[OAR Docket #22-870]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 33. Transportation by Ambulance

317:30-5-345 [NEW]

(Reference APA WF # 22-05)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 CFR 433.50, 433.55, 433.56, 433.57, 433.68, 433.72; 63 O.S. 3241.1 - 3242.6; and Oklahoma House Bill (HB) 2950

ADOPTION:

September 21, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to implement changes in state law at 63 Oklahoma Statutes, 3241.1 through 3242.6, due to passage of Oklahoma House Bill No. 2950, which mandated that Oklahoma obtain federal and state authority in order to establish and enforce an Ambulance Service Provider Access Payment Program (ASPAPP). The aim of ASPAPP is to assure access to quality emergency transports for state Medicaid members, by assessing a fee to privately owned ambulance service providers licensed in Oklahoma, to be used to supplement appropriations to support ambulance service provider reimbursement. The proposed rule revisions will establish the program's provider fee calculation, provider exemptions, provider notification requirements, payment schedules, penalties, and appeals requirements.

GIST/ANALYSIS:

These emergency revisions are necessary to establish rules consistent with the Oklahoma State Plan, which outlines the Ambulance Service Provider Access Payment Program (ASPAPP). The ASPAPP is a voluntary program designed to help assure access to quality emergency transports for SoonerCare members by assessing a fee to privately owned ambulance service providers and then issuing quarterly supplemental payments to those providers.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 33. TRANSPORTATION BY AMBULANCE

Emergency Adoptions

317:30-5-345. Ambulance Service Provider Access Payment Program (ASPAPP)

(a) **Purpose.** The Ambulance Service Provider Access Payment Program (ASPAPP) is an ambulance service provider (ASP) assessment fee that is eligible for federal matching funds when used to reimburse SoonerCare services in accordance with Section 3242.1 through 3242.6 of Title 63 of the Oklahoma Statutes (O.S.).

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

(1) **"Air ambulance"** means ambulance services provided by fixed or rotor wing ambulance services.

(2) **"Alliance"** means the Oklahoma Ambulance Alliance or its successor association.

(3) **"Ambulance"** means a motor vehicle that is primarily used or designated as available to provide transportation and basic life support or advanced life support.

(4) **"Ambulance service" or "ambulance service provider (ASP)"** means any private firm or governmental agency licensed by the Oklahoma State Department of Health (OSDH) to provide levels of medical care based on certification rules or standards promulgated by the state Commissioner of Health.

(5) **"Emergency" or "emergent"** means a serious situation or occurrence that happens unexpectedly and demands immediate action, such as a medical condition manifesting itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected, by a reasonable and prudent layperson, to result in placing the patient's health in serious jeopardy, serious impairment to bodily function or serious dysfunction of any bodily organ or part.

(6) **"Emergency transport"** means the movement of an acutely ill or injured patient from the scene to a health care facility or the movement of an acutely ill or injured patient from one health care facility to another health care facility.

(7) **"Medicaid"** means the medical assistance program established in Title XIX of the Social Security Act and administered in Oklahoma by the Oklahoma Health Care Authority (OHCA).

(8) **"Net operating revenue"** means the gross revenues earned for providing emergency transports in Oklahoma excluding revenues earned for providing air ambulance services, non-emergency transports, and amounts refunded to or recouped, offset, or otherwise deducted by a patient or payer for ground medical transportation.

(9) **"Non-emergency transport"** means the movement of any patient in an ambulance other than an emergency transport, as defined in Oklahoma Administrative Code (OAC) 317:30-5-335.1.

(10) **"Upper payment limit"** means the lesser of the customary charges of the ASP or the prevailing charges in the locality of the ASP for comparable services under comparable circumstances, calculated according to

methodology in an approved state plan amendment for the state Medicaid program.

(11) **"Upper payment limit gap"** means the difference between the upper payment limit of the ASP and the Medicaid payments not financed using the ASP assessments made to all ASPs, provided that the upper payment limit gap shall not include air ambulance services.

(c) **ASPAPP exemptions.**

(1) Pursuant to 63 O.S. §§ 3242.1 through 3242.6 the OHCA is mandated to assess ASPs licensed in Oklahoma, unless exempted under (c) (2) of this Section, an ASP access payment program fee.

(2) The following ASPs are exempt from the ASPAPP fee:

(A) Owned or operated by the state or a state agency, the federal government, a federally recognized Indian tribe, or the Indian Health Service.

(B) Eligible for Supplemental Hospital Offset Payment Program (SHOPP) Medicaid reimbursement;

(C) Provides air ambulance services only; or

(D) Provides non-emergency transports only.

(d) **The ASPAPP assessment.**

(1) The ASPAPP assessment is imposed on each ambulance service provider, except those exempted under (c)(2) of this Section, for each calendar year in an amount calculated as a percentage of each ambulance service provider's net operating revenue.

(2) The assessment rate shall be determined annually based upon the percentage of net operating revenue needed to generate an amount up to the non-federal portion of the upper payment limit gap, plus the annual fee paid to OHCA for administrative expenses incurred in performing the activities, not to exceed \$200,000 each year, plus the state share of ASP access payments for ASPs that participate in the assessment. At no time will the assessment rate exceed the maximum rate allowed by federal law or regulation.

(3) OHCA will review and determine the amount of annual assessment in December of each year in consultation with the Oklahoma Ambulance Alliance.

(4) The annual assessment is due and payable quarterly. However, a payment of the assessment will not be due and payable until:

(A) OHCA issues written notice stating that the payment methodologies to the ASPs under 63 O.S. §§ 3242.1 through 3242.6 have been approved by the Centers for Medicare and Medicaid Services (CMS) and the waiver under 42. C.F.R. § 433.68 for the assessment, if necessary, has been granted by CMS.

(B) OHCA has made all quarterly installments of the ASP access payments that were otherwise due, consistent with the effective date of the approved state plan.

(5) The method of collection of net operating revenue is as follows:

(A) Annually, no later than January 31, OHCA will send all licensed ASPs the net operating revenue form. ASPs shall complete the forms and deliver

them to OHCA or its contractor no later than March 31 of that year. ASPs that fail to return the net operating revenue form will have their assessment calculated based on the state per capita average assessment for that year. OHCA will send a notice of assessment to each ASP informing the provider of the assessment rate and the estimated annual amount owed by the ASP for the applicable calendar year.

(B) The first notice of assessment will be sent within forty-five (45) days of receipt by OHCA of notice from the Centers for Medicare and Medicaid Services that the payments under 63 O.S. §§ 3242.1 through 3242.6, and if necessary, the waiver granted under 42 C.F.R. § 433.68 have been approved.

(C) Annual notices of assessment will be sent at least forty-five (45) days before the due date for the first quarterly assessment payment of each calendar year. The ASP shall have thirty (30) days from the date of its receipt of a notice of assessment to review and verify the assessment rate and the estimated assessment amount.

(D) If an ASP operates, conducts, or maintains more than one (1) ASP in the state, the ASP will pay the assessment for each ASP separately. However, if the ASP operates more than one (1) ASP under one (1) Medicaid provider number, the ASP provider may pay the assessment for all such ASPs in the aggregate.

(6) The method of collection of the assessment fee is as follows:

(A) After the initial installment has been paid, each subsequent quarterly payment of an assessment will be due and payable by the 15th day on the first month of the applicable quarter (i.e., January 15th, April 15th, etc.)

(B) Failure to pay the amount by the 15th or failure to have the payment mailing postmarked by the 13th will result in a debt to the State of Oklahoma and is subject to penalties of five percent (5%) of the amount and interest of one and one-quarter percent (1.25%) per month.

(e) Penalties and adjustments

(1) If an ASP fails to timely pay the full amount of a quarterly assessment, OHCA will add to the assessment:

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

(B) An additional five percent (5%) penalty on any unpaid quarterly and unpaid penalty amounts on the last day of each quarter after the due date until the assessed amount and the penalty imposed under subpart (A) of this paragraph are paid in full.

(2) The quarterly assessment including applicable penalties and interest must be paid regardless of any appeals action requested by the facility. If an ASP fails to pay the OHCA the assessment within the timeframes noted on the invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the ASP's payment.

(3) Any change in payment amount resulting from an appeals decision will be adjusted in future payments.

(4) If Medicaid reimbursement rates are adjusted, ASP rates may not be adjusted less favorably than the average percentage-rate reduction or increase applicable to the majority of other provider groups.

(f) Closure, merger, and new Ambulance Service Providers (ASPs).

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

(2) The ASP also shall receive payments under 63 O.S. §§ 3242.1 through 3242.6, for the calendar year in which the cessation occurs, which will be adjusted by the same fraction as its annual assessment.

(3) For new ASPs, the OHCA will calculate revenue to be assessed based on the population of the county for which the ASP is licensed. The per capita amount will be assigned and calculated based on the average net operating revenue per capita for all other ASPs in the state that are currently being assessed. Average revenue per capita will be used in this way through the end of the second calendar year.

(4) Any assessment paid by a provider on revenue subject to another health care related tax as defined in 42 CFR § 433.68 shall be a credit against any assessment due under these rules.

(g) Disbursement of payment to ASPs.

(1) To preserve and improve access to ambulance services, for ambulance services rendered on or after the approval of the ASPAPP by CMS, OHCA shall make ASP payments as set forth in this section. These payments are considered supplemental payments and do not replace any currently authorized Medicaid payments for ambulance services.

(2) OHCA shall pay all quarterly ASP access payments within ten (10) calendar days of the due date for the quarterly assessment payments established in subsection (d) of this section.

(3) OHCA shall calculate the ASP access payment amount as the balance of the ASPAPP Fund plus any federal matching funds earned on the balance up to but not to exceed the upper payment limit gap for all ASPs.

(4) All ASPs shall be eligible for ASP access payments each year as set forth in this subsection except ambulance services excluded or exempted in subsection (c)(2) of this section.

(5) Access payments shall be made on a quarterly basis.

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(6) ASPs eligible to receive ASP access payments are those providers:

- (A) Subject to this assessment; and
- (B) That apply to receive the ASP access payment as provided in Section 317:30-5-345.

(7) An application by the ASP shall be submitted to OHCA to be eligible to receive payments.

(A) Not less than one-hundred eighty (180) days prior to the beginning of each state fiscal year, OHCA will send all qualified licensed ASPs an application for ASP access payments.

(B) The application will:

(i) Allow the ASP to submit all information needed to calculate that ASP's average commercial rate;

(ii) Provide that the application must be received by OHCA on a date which will be no less than one-hundred twenty (120) days prior to the beginning of the calendar year;

(iii) Explain that unless exempt from payment by law, the ASP will be required to pay the ASP assessment even if the provider fails to apply for the ASP access payments;

(iv) Explain that if the ASP fails to supply the Net Operating Revenue Survey, the assessment will be calculated based on the state per capita average assessment for that year; and

(v) Explain that the ASP will not be eligible to receive ASP access payments in the next calendar year if the application is not timely filed but will still be assessed based on the average assessment.

(C) An ASP that has previously received ASP access payments is required to make an application for such payments and provide the revenue survey no less than every three (3) years.

(8) The Average Commercial Rate will be calculated as follows:

(A) The ASP access payment shall be determined in a manner to bring the payments for these services up to the average commercial rate level as described in Section 317:30-5-345. The average commercial rate level is defined as the average amount payable by the commercial payers for the same service.

(B) OHCA shall align the paid Medicaid claims with the Medicare fees for each healthcare common procedure coding system (HCPCS) or current procedure terminology (CPT) code for the ASP and calculate the Medicare payment for those claims.

(C) OHCA shall calculate an overall Medicare to commercial conversion factor for each qualifying ASP that submits an ASP access payment application by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims.

(D) The commercial to Medicare ratio for each provider will be redetermined every three (3) years.

[OAR Docket #22-870; filed 11-8-22]

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

[OAR Docket #22-871]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 80. ~~Mobile and/or Portal Dental Treatment Facilities~~ Mobile and Portable Dental Services

317:30-5-706 [AMENDED]

317:30-5-707 [AMENDED]

317:30-5-708 [AMENDED]

317:30-5-709 [REVOKED]

317:30-5-710 [REVOKED]

317:30-5-711 [REVOKED]

(Reference APA WF # 22-18)

AUTHORITY:

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

ADOPTION:

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EXPIRATION:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of revisions to its current policy in order to protect the public health, safety, or welfare. Currently, policy allows mobile or portable dental providers to render services to only children and the services are limited to screenings, fluoride varnish, and sealants. The proposed rule changes allow mobile dental providers to render more dental services and allow SoonerCare members access dental care where there are shortage areas in the State.

GIST/ANALYSIS:

These emergency revisions are necessary to allow mobile or portable dental providers to render services to only children and the services are limited to screenings, fluoride varnish, and sealants. The proposed rule changes allow mobile dental providers to render more services that SoonerCare currently covers for dental providers and authorizes mobile dental services for both children and adults. These changes aim to help SoonerCare members access dental care where there are shortage areas in the State.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 80. MOBILE AND/OR PORTAL DENTAL TREATMENT FACILITIES MOBILE AND PORTABLE DENTAL SERVICES

317:30-5-706. Definitions Mobile Dental Units

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

"Individual provider" means a dentist, dental hygienist, or dental assistant who provides dental services at a mobile and/or portable dental treatment facility.

"Mobile and/or portable dental treatment facilities" means the following, limited places of treatment, as authorized by the Oklahoma State Dental Act: group homes for juveniles; public and private schools; and mobile dental clinics. The rules in this Part expressly shall not apply to SoonerCare reimbursement of dental services provided at any other authorized place of service, including, but not limited to: "dental offices," as defined by 59 O.S. § 328.3; federal, tribal, state, or local public health facilities; federally qualified health centers; and hospitals or dental ambulatory surgery centers.

(a) **Definition.** Mobile dental unit means a motor vehicle or trailer that contains dental equipment and is used to provide dental services to eligible SoonerCare members on-site in accordance with Title 59 of Oklahoma Statutes (O.S.), Section 328.3 (59 O.S. §328.3).

(b) **Eligible providers.** For dental services provided at a mobile dental unit to be eligible for SoonerCare reimbursement, a dental group shall meet all applicable requirements set forth in the Oklahoma Board of Dentistry rules, the Oklahoma State Dental Act (59 O.S., Ch. 7), and the requirements in this Section, including but not limited to, all licensing and permitting requirements.

(1) All dentists working at a mobile dental unit shall be currently licensed in good standing with the Oklahoma Board of Dentistry. All other contracted providers of the dental group, working at a mobile dental unit, shall meet all credentialing/certification requirements, as per their specialty. In addition, all members of the dental group working at a mobile dental unit shall comply with the requirements at Oklahoma Administrative Code (OAC) 317:30-5-695.

(2) The license, certification, accreditation, and/or permit (or a photocopy of these documents) of every individual provider in the dental group shall be prominently displayed at the mobile dental unit, pursuant to 59 O.S., Section (§) 328.21.

(3) For services provided in a mobile dental unit, the permit to operate the mobile dental unit shall be prominently displayed in the mobile dental unit vehicle, pursuant to 59 O.S. §328.40a.

(4) In accordance with OAC 317:30-5-695.1, every dental group providing services at a mobile dental unit must be fully contracted with the Oklahoma Health Care Authority (OHCA) as a dental group provider and must also be fully contracted with OHCA as a mobile dental unit.

(5) Every individual dentist practicing at a mobile dental unit must be fully contracted with the OHCA as a dentist.

(6) Dental groups and individual providers providing dental services at a mobile dental unit shall comply with all applicable state and federal Medicaid laws, including, but not limited to, OHCA administrative rules, the Code of Federal Regulations, and the Oklahoma State Medicaid Plan.

(c) **Coverage.** Refer to OAC 317:30-5-696 for dental coverage descriptions for children and adults.

(d) **Description of services.** Mobile dental units must treat both children and adults and provide urgent, preventive, and restorative dental services that are appropriate to provide in this setting.

(1) All current dental rules at OAC 317, Part 79, still apply to all mobile dental services including, but not limited to, prior authorizations, medically necessity criteria, documentation, and limitations.

(2) Endodontics, orthodontics, prosthodontics, periodontics, and permanent crowns will not be covered in mobile clinic.

(3) Mobile dental units will be required to refer a member to a SoonerCare contracted dental provider for any follow-up care when needed or to access services that cannot be provided in the mobile unit.

(e) **Limited provider service area.** Mobile dental units should serve members in SoonerCare dental provider shortage areas. Dental provider shortage areas mean Oklahoma counties that have less than ten (10) Medicaid general dental providers.

(f) **Billing and reimbursement.** Billing and reimbursement policies in accordance with OAC 317:30-5-704 through 317:30-5-705 apply to mobile dental services.

(g) **Post Care.** Each member receiving dental care at a mobile dental unit must receive an information sheet at the end of the visit. The information sheet must contain:

(1) The name of the dentist, dental hygienist, and/or dental assistant who provided the dental services at the mobile dental unit;

(2) Valid contact information which can include a business telephone number, email address and/or other emergency contact number for the dental group and/or dentist that provided the dental services at the mobile dental unit;

(3) A listing of the treatment rendered, including, when applicable, billing codes, fees, and tooth numbers;

(4) A description of any follow-up treatment that is needed or recommended; and

(5) Referrals to specialists or other dentists if the mobile dental unit providers were unable to provide the necessary treatment and/or additional care is needed.

(6) All dental records including radiographs from that visit should be provided to the member and/or forwarded to the dental provider providing follow-up care. Electronic and/or printed forms of records are acceptable.

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317:30-5-707. Eligible providers~~Portable Dental Units~~

~~(a) In order for dental services provided at a mobile and/or portable dental treatment facility to be eligible for SoonerCare reimbursement, a dental group shall meet all applicable requirements set forth in the Oklahoma Board of Dentistry rules and the Oklahoma State Dental Act, including, but not limited to, all licensing and permitting requirements.~~

~~(1) All dentists and dental hygienists working at a mobile and/or portable dental treatment facility shall be currently licensed in good standing with the Oklahoma Board of Dentistry. All dental assistants working at a mobile and/or portable dental treatment facility shall be currently permitted by the Oklahoma Board of Dentistry.~~

~~(2) The license or permit (or a photocopy of the license or permit) of every individual provider shall be prominently displayed at the mobile and/or portable dental treatment facility, pursuant to 59 O.S. § 328.21.~~

~~(3) For services provided in a mobile dental clinic, the permit to operate the mobile dental clinic shall be prominently displayed in the mobile dental clinic vehicle, pursuant to 59 O.S. § 328.40a.~~

~~(b) In accordance with OAC 317:30-5-695.1, every dental group providing services at a mobile and/or portable dental treatment facility must be fully contracted with the OHCA as a dental group provider and must be fully contracted with OHCA as a mobile and/or portable dental treatment facility.~~

~~(c) Every individual dentist practicing at a mobile and/or portable dental treatment facility must be fully contracted with the OHCA as a dentist.~~

~~(d) Dental groups and individual providers providing dental services at a mobile and/or portable dental treatment facility shall comply with all state and federal Medicaid law, including, but not limited to, OHCA administrative rules, the Code of Federal Regulations, and the Oklahoma State Medicaid Plan.~~

~~(a) **Definition.** Portable dental unit means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location at either group homes for juveniles or public and private schools.~~

~~(b) **Eligible providers.** For dental services provided at a portable dental unit to be eligible for SoonerCare reimbursement, a dental group shall meet all applicable requirements set forth in the Oklahoma Board of Dentistry rules, the Oklahoma State Dental Act (59 O.S., Ch. 7), and the requirements in this Section, including but not limited to, all licensing and permitting requirements.~~

~~(1) All dentists working at a portable dental unit shall be currently licensed in good standing with the Oklahoma Board of Dentistry. All other contracted providers of the dental group, working at a portable dental unit, shall meet all credentialing/certification requirements, as per their specialty. In addition, all members of the dental group working at a portable dental unit shall comply with the requirements at Oklahoma Administrative Code (OAC) 317:30-5-695.~~

~~(2) The license or permit (or a photocopy of the license or permit) of every individual provider shall be prominently displayed at the portable dental unit site, pursuant to Title of 59 O.S. § 328.21.~~

~~(3) In accordance with OAC 317:30-5-695.1, every dental group providing services at a portable dental unit must be fully contracted with the OHCA as a dental group provider.~~

~~(4) Every individual dentist practicing at a portable dental unit must be fully contracted with the OHCA as a dentist.~~

~~(5) Dental groups and individual providers providing dental services at a portable dental unit shall comply with all state and federal Medicaid laws, including, but not limited to, OHCA administrative rules, the Code of Federal Regulations, and the Oklahoma State Medicaid Plan.~~

~~(c) **Coverage.** Portable dental unit services are only available for SoonerCare-eligible individuals under the age of twenty-one (21) and limited to the services noted in (1) through (3) of this Subsection. All portable dental units must have a SoonerCare-contracted, Oklahoma-licensed dentist onsite to supervise all other portable dental unit staff. Coverage for dental services provided to children/adolescents at a portable dental unit is limited to:~~

~~(1) One (1) fluoride application per member per twelve (12) months;~~

~~(2) One (1) dental screening annually that is performed by a SoonerCare-contracted, Oklahoma-licensed dentist; and~~

~~(3) Dental sealants on tooth numbers 2, 3, 14, 15, 18, 19, 30, and 31. The OHCA will not reimburse the application of dental sealants for a given OHCA member more than once every thirty-six (36) months, regardless of whether the services are provided at a portable dental unit, or at some other authorized place of service.~~

~~(d) **Post Care.** Each member receiving dental care at a portable dental unit must receive an information sheet at the end of the visit. The information sheet must contain:~~

~~(1) The name of the dentist, dental hygienist, and/or dental assistant who provided the dental services at the portable dental unit;~~

~~(2) A valid business telephone number and/or other emergency contact number for the dental group and/or dentist that provided the dental services at the portable dental unit;~~

~~(3) A listing of the treatment rendered, including, when applicable, billing codes, fees, and tooth numbers;~~

~~(4) A description of any follow-up treatment that is needed or recommended; and~~

~~(5) Referrals to specialists or other dentists if the portable dental unit providers were unable to provide the necessary treatment and/or additional care is needed.~~

~~(e) **Billing.** Refer to OAC 317:30-5-704 through 317:30-5-705 for billing instructions and guidelines. Please note that for any dental service provided through a portable dental unit that is billed to SoonerCare, the appropriate place of service must be identified on the claim to receive reimbursement.~~

317:30-5-708. Parental consent requirements

Individual providers at a ~~mobile and/or portable dental treatment facility~~mobile or portable dental unit shall not perform any service on a minor without having obtained, prior to the provision of services, a signed, written consent from the minor's parent or legal guardian, that includes, at a minimum, the:

- (1) Name of the dental group and/or dentist providing the dental services at the mobile and/or portable dental ~~treatment facility~~unit;
- (2) Permanent business mailing address of the dental group and/or dentist providing the dental services at the mobile and/or portable dental ~~treatment facility~~unit;
- (3) Business telephone number of the dental group and/or dentist providing the dental services at the mobile and/or portable dental ~~treatment facility~~unit. This telephone number must be available for emergency calls;
- (4) Full printed name of the child to receive services;
- (5) Child's SoonerCare Member ID number; and
- (6) An inquiry of whether the child has had dental care in the past twelve (12) months and if the child has a dental appointment scheduled with his/her regular dentist. If applicable, parent should list the name and address of the dentist and/or dental office where the care is provided.

317:30-5-709. Coverage [REVOKED]

~~Payment is made only to contracted dental groups for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services provided to SoonerCare eligible individuals under the age of twenty one (21). All mobile and/or portable dental treatment facilities must have a SoonerCare contracted, Oklahoma licensed dentist onsite to supervise staff and provide certain services. Coverage for dental services provided to children/adolescents at a mobile and/or portable dental treatment facility is limited to:~~

- ~~(1) One (1) fluoride application per member per twelve (12) months;~~
- ~~(2) One (1) dental assessment annually that is performed by a SoonerCare contracted, Oklahoma licensed dentist; and~~
- ~~(3) Dental sealants on tooth numbers 2, 3, 14, 15, 18, 19, 30, and 31. The Oklahoma Health Care Authority (OHCA) will not reimburse the application of dental sealants for a given OHCA member more than once every thirty six (36) months, regardless of whether the services are provided at a mobile and/or portable dental treatment facility, or at some other authorized place of service.~~

317:30-5-710. Post-care [REVOKED]

~~Each member receiving dental care at a mobile and/or portable dental treatment facility must receive an information sheet at the end of the visit. The information sheet must contain:~~

- ~~(1) The name of the dentist, dental hygienist, and/or dental assistant who provided the dental services at the mobile and/or portable dental treatment facility;~~

- ~~(2) A valid business telephone number and/or other emergency contact number for the dental group and/or dentist that provided the dental services at the mobile and/or portable dental treatment facility;~~
- ~~(3) A listing of the treatment rendered, including, when applicable, billing codes, fees, and tooth numbers;~~
- ~~(4) A description of any follow up treatment that is needed or recommended; and~~
- ~~(5) Referrals to specialists or other dentists if the individual providers were unable to provide the necessary treatment, and additional care is needed.~~

317:30-5-711. Billing [REVOKED]

~~Refer to Oklahoma Administrative Code (OAC) 317:30-5-704 through 317:30-5-705 for billing instructions and guidelines. Please note that for any dental service provided at a mobile and/or portable dental treatment facility that is billed to SoonerCare, the appropriate place of service must be identified on the claim.~~

[OAR Docket #22-871; filed 11-8-22]

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

[OAR Docket #22-868]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 5. Individual Providers and Specialties
- Part 6. Inpatient Psychiatric and Substance Use Disorder Services
- 317:30-5-95.6 [AMENDED]
- 317:30-5-95.16 [AMENDED]
- 317:30-5-95.34 [AMENDED]
- 317:30-5-95.37 [AMENDED]
- (Reference APA WF # 22-13)

AUTHORITY:

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

ADOPTION:

September 21, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its current inpatient psychiatric and substance use disorder services policy to protect the public health, safety, or welfare. The approval of the emergency rule will allow Advanced Practice Registered Nurses (APRNs) with psychiatric certifications and Physician Assistants (PAs) to provide psychiatric services to Medicaid members. Presently, the psychiatric service provision is only allowed by psychiatrists to members in inpatient settings. The psychiatric services provided by APRNs and PAs will now include psychiatric evaluations and weekly individual treatment hours, thus increasing access to care.

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GIST/ANALYSIS:

These emergency revisions are necessary to allow APRNs with psychiatric certifications and PAs to provide psychiatric services. Presently, psychiatric service provision is only allowed by psychiatrists to members in inpatient settings. The psychiatric services provided by APRNs and PAs will now also include psychiatric evaluations and weekly individual treatment hours. The proposed rule aims to address physician shortages and extend the reach of behavioral health treatments such as psychiatric evaluations and weekly individual treatment hours by allowing inpatient psychiatric providers to utilize APRNs with psychiatric certifications and PAs.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC AND SUBSTANCE USE DISORDER SERVICES

317:30-5-95.6. Medical, psychiatric, and social evaluations for adults aged twenty-one (21) to sixty-four (64)

The record for an adult member aged twenty-one (21) to sixty-four (64) must contain complete medical, psychiatric, and social evaluations.

- (1) The evaluations must be completed as follows:
 - (A) History and ~~Physical~~physical must be completed within twenty-four (24) hours of admission by a licensed independent practitioner [~~MD, DO~~Allopathic Doctor, Osteopathic Doctor, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA)].
 - (B) Psychiatric ~~Evaluation~~evaluation must be completed within sixty (60) hours of admission by an ~~Allopathic or~~Osteopathic Physician with a current license and a board certification/eligible in psychiatry, an APRN with a psychiatric certification or a PA.
 - (C) Psychosocial ~~Evaluation~~evaluation must be completed within seventy-two (72) hours of admission by a licensed independent practitioner (~~MD, DO, Allopathic Doctor, Osteopathic Doctor, APRN, or PA~~), ~~a licensed behavioral health professional~~an LBHP, or a licensure candidate as defined in OAC 317:30-5-240.3.
- (2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.16. Medical psychiatric and social evaluations for persons sixty-five (65) years of age or older receiving inpatient acute psychiatric services

The record of a member sixty-five (65) years of age or older receiving inpatient acute psychiatric services must contain complete medical, psychiatric, and social evaluations.

- (1) The evaluations must be completed as follows:
 - (A) History and ~~Physical~~physical must be completed within twenty-four (24) hours of admission by a licensed independent practitioner [~~MD, DO~~Allopathic Doctor, Osteopathic Doctor, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA)].
 - (B) Psychiatric ~~Evaluation~~evaluation must be completed within sixty (60) hours of admission by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry, an APRN with a psychiatric certification or a PA.
 - (C) Psychosocial ~~Evaluation~~evaluation must be completed within seventy-two (72) hours of admission by a licensed independent practitioner (Allopathic Doctor, Osteopathic Doctor, APRN, or PA), ~~a licensed behavioral health professional (LBHP)~~an LBHP, or licensure candidate as defined in OAC 317:30-5-240.3.
- (2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.34. Active treatment for children

- (a) The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:
 - (1) **"Active treatment"** means implementation of a professionally developed and supervised individual plan of care (IPC) that involves the member and his or her family or guardian from the time of an admission, and through the treatment and discharge process.
 - (2) **"Discharge/transition planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the member's needs at the time of admission and continues throughout the member's stay. Active collaboration with the member, family, and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the wraparound process through Systems of Care, counseling, case management, and other supports in the member's community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.
 - (3) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, and experiential (e.g., ropes course), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(4) **"Family therapy"** means interaction between an LBHP or licensure candidate, member, and family member(s) to facilitate emotional, psychological, or behavioral changes and promote successful communication and understanding.

(5) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the individual care plan, which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living (ADL).

(6) **"Individual rehabilitative treatment"** means a face-to-face, one-on-one interaction which is performed to assist a member who is experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder, in order to increase the skills necessary to perform ADL.

(7) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face-to-face, one-on-one interaction between an LBHP or licensure candidate and a member to promote emotional or psychological change to alleviate disorders.

(8) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between an LBHP or licensure candidate, and two (2) or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "active treatment". Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well-documented in the member's treatment plan. Family therapy attendance by family members is not a requirement for individuals in the age range of eighteen (18) up to twenty-one (21). Active treatment also includes ongoing assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician.

(c) For individuals ages eighteen (18) up to twenty-one (21), the active treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric-social functioning. The services and the IPC must be recovery-focused, trauma-informed, specific to culture, age, and gender, and provided face to face. Services, including type and frequency, will be specified in the IPC.

(d) A treatment week consists of seven (7) calendar days. In an Acute setting, the treatment week begins the day of admission. In Acute II and PRTF, the treatment week starts on Sunday and ends on Saturday. Active treatment service components are provided as per item (e) below if the services are provided within a seven (7) day treatment week. A chart outlining active treatment component requirements and timelines may also be found at www.okhca.org. If a member has a

length of stay of less than seven (7) days, the treatment week is considered a partial treatment week. Active treatment requirements, when provided during a partial treatment week, are delivered as per item (f) below. An hour of treatment must be sixty (60) minutes. When appropriate to meet the needs of the child, the sixty (60) minute timeframe may be split into sessions of no less than fifteen (15) minutes each, on the condition that the active treatment requirements are fully met by the end of the treatment week.

(e) For individuals under age eighteen (18), the components of active treatment consist of face-to-face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and IPC must be recovery-focused, trauma-informed, and specific to culture, age, and gender. Individuals receiving services in an Acute setting must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours dedicated to core services as described in (1) below. Individuals in Acute II and PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours dedicated to core services as described in (1) below. Upon fulfilling the core service hours requirement, the member may receive either the elective services listed in (2) below or additional core services to complete the total required hours of active treatment. The following components meet the minimum standards required for active treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) **Core services.**

(A) **Individual treatment provided by the physician, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA).** Individual treatment provided by the physician, APRN with psychiatric certification or PA is required three (3) times per week for Acute and one (1) time a week in Acute II and PRTFs. Individual treatment provided by the physician, APRN with psychiatric certification or PA will never exceed ten (10) calendar days between sessions in Acute II and PRTFs, and never exceed seven (7) calendar days in a specialty Acute II and specialty PRTF. Individual treatment provided by the physician, APRN with psychiatric certification or PA may consist of therapy or medication management intervention for Acute, Acute II, and PRTF programs.

(B) **Individual therapy.** LBHPs or licensure candidates performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, or another widely accepted theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment, as well as psycho-educational intervention, are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal-directed, utilizing techniques appropriate to the member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two (2) hours per

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week in Acute and one (1) hour per week in Acute II and PRTFs by an LBHP or licensure candidate. One (1) hour of family therapy may be substituted for one (1) hour of individual therapy at the treatment team's discretion.

(C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one (1) hour per week in Acute, Acute II, and PRTFs. One (1) hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by an LBHP or licensure candidate.

(D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three (3) hours per week in Acute and two (2) hours per week in Acute II and PRTFs by an LBHP or licensure candidate. In lieu of one (1) hour of process group therapy, one (1) hour of expressive group therapy provided by an LBHP, licensure candidate, or licensed therapeutic recreation specialist may be substituted.

(E) **Transition/discharge planning.** Transition/discharge planning must be provided one (1) hour per week in Acute and thirty (30) minutes per week in Acute II and PRTFs. Transition/discharge planning can be provided by any level of inpatient staff.

(2) **Elective services.**

(A) **Expressive group therapy.** Through active expression, inner strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy.

(B) **Group rehabilitative treatment.** Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes, and recovery principles. Each service provided under group rehabilitative treatment

services must have goals and objectives directly related to the IPC.

(C) **Individual rehabilitative treatment.** Services are provided to reduce psychiatric and behavioral impairment and to restore functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes, and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the IPC and the member's diagnosis.

(D) **Recreation therapy.** Services are provided to reduce psychiatric and behavioral impairment and to restore, remediate, and rehabilitate an individual's level of functioning and independence in life activities. Services are provided to promote health and wellness, as well as reduce or eliminate barriers caused by illness or disabling conditions that limit or restrict a member from participating in life activities. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e., to provide some social or recreational outlet for the individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a licensed therapeutic recreation specialist.

(E) **Occupational therapy.** Services are provided to address developmental and/or functional needs related to the performance of self-help skills, adaptive behavioral, and/or sensory, motor, and postural development. Services include therapeutic goal-directed activities and/or exercises used to improve mobility and ADL functions when such functions have been impaired due to illness or injury. Services must be provided by an occupational therapist appropriately licensed in the state in which he or she practices.

(F) **Wellness resource skills development.** Services include providing direction and coordinating support activities that promote physical health. The focus of these activities should include areas such as nutrition, exercise, support to avert and manage physical health concerns like heart disease, diabetes, and cholesterol, and guidance on the effects that medications have on physical health. Services can include individual/group support, exercise groups, and individual physical wellness plan development, implementation, and assistance.

(3) **Modifications to active treatment.** When a member is too physically ill, or his or her acuity level precludes him or her from active behavioral health treatment, documentation must demonstrate that alternative clinically-appropriate services were provided.

(f) Active treatment components, furnished during a partial treatment week, are provided as per item (1) through (4) below. A chart outlining active treatment component requirements

and timelines may also be found at www.okhca.org. Assessments/evaluations may serve as the initial individual or family session if completed by an LBHP or licensure candidate. Start and stop time must be documented. Active treatment begins the day of admission. Days noted are calendar days.

(1) **Individual treatment provided by the physician, APRN or PA.**

(A) In Acute, by day two (2), one (1) visit is required. By day four (4), two (2) visits are required. By day seven (7), three (3) visits are required.

(B) In Acute II and PRTFs, one (1) visit during admission week is required. In PRTFs, one (1) visit during the admission week is required, then once a week thereafter. Individual treatment provided by the physician, APRN with psychiatric certification or PA will never exceed ten (10) days between sessions in Acute II and PRTFs, never exceed seven (7) days in specialty Acute II and specialty PRTFs. The completion of a psychiatric evaluation or a combined psychiatric evaluation and a history and physical (H&P) evaluation may count as the first visit ~~by the physician~~—if the evaluation was personally rendered by the psychiatrist, APRN with psychiatric certification or PA. If the member is admitted on the last day of the admission week, then the member must be seen by a physician, APRN with psychiatric certification or PA within sixty (60) hours of admission time.

(2) **Individual therapy.**

(A) In Acute, by day three (3), thirty (30) minutes of treatment are required. By day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week. This does not include admission assessments/evaluations or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(B) In Acute II and PRTFs, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. The treatment week is defined as Sunday through Saturday. Individual therapy may not exceed a total of ten (10) days between sessions. This does not include admission assessment/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(3) **Family therapy.**

(A) In Acute, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admission assessments/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessments/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement.

(B) In Acute II and PRTFs, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is

required each week. This does not include admissions assessment/evaluation or psychosocial evaluation unless personally (face to face) rendered by the LBHP or licensure candidate and the assessment/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement. Family therapy provided by the LBHP or licensure candidate should not exceed ten (10) days in between sessions.

(4) **Process group therapy.**

(A) In Acute, by day three (3), one (1) hour of treatment is required. By day five (5), two (2) hours of treatment are required. Beginning on day seven (7), three (3) hours of treatment are required each week.

(B) In Acute II and PRTFs, by day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week.

(g) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff [registered nurse (RN)/licensed practical nurse (LPN)], documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

317:30-5-95.37. Medical, psychiatric, and social evaluations for inpatient services for children

The member's medical record must contain complete medical, psychiatric, and social evaluations.

(1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:

(A) History and physical evaluation must be completed within twenty-four (24) hours of admission by a licensed independent practitioner (~~M.D., D.O., A.P.N., or P.A.~~) [Allopathic Doctor, Osteopathic Doctor, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA)] in Acute, Acute II, and PRTFs.

(B) Psychiatric evaluation must be completed within sixty (60) hours of admission by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry, APRN with a psychiatric certification or PA in Acute, Acute II, and PRTFs.

(C) Psychosocial evaluation must be completed within seventy-two (72) hours of an Acute admission, and within seven (7) calendar days of admission to Acute II and PRTFs by a licensed independent practitioner (~~M.D., D.O., A.P.N., or P.A.~~) (Allopathic Doctor, Osteopathic Doctor, APRN, or PA), LBHP, or licensure candidate.

(2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.

(3) Each of the evaluations must be completed when the member changes levels of care if the existing evaluation is more than thirty (30) calendar days from admission. For continued stays at the same level of care, evaluations

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remain current for twelve (12) months from the date of admission and must be updated annually within seven (7) calendar days of that anniversary date.

(4) Existing evaluations of thirty (30) days or less may be used when a member changes provider or level of care. The evaluation(s) must be reviewed, updated as necessary, and signed and dated by the appropriate level of professional as defined by the type of evaluation.

[OAR Docket #22-868; filed 11-8-22]

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

[OAR Docket #22-866]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Eligibility and Countable Income

Part 1. Determination of Qualifying Categorical Relationships

317:35-5-2 [AMENDED]

(Reference APA WF # 22-17)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and P.L. 115-271 § 1002 (the SUPPORT Act)

ADOPTION:

September 21, 2022

EFFECTIVE:

January 1, 2023

APPROVED BY GOVERNOR:

November 4, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to implement changes in federal law (P.L. 115-271 § 1002 referred to as the SUPPORT Act) requiring SoonerCare to grant eligibility in the former foster care youth category to individuals who were enrolled in Medicaid when they aged out of foster care in another state on January 1, 2023, or later, and who now reside in Oklahoma. Prior to the federal law changes, SoonerCare was only required to grant eligibility in the former foster care youth category to individuals who were enrolled in Medicaid when they aged out of foster care in Oklahoma.

GIST/ANALYSIS:

These emergency revisions are necessary to comply with changes in federal law. The changes require SoonerCare to grant eligibility to individuals in the former foster care youth category who were enrolled in Medicaid when they aged out of foster care in another state on January 1, 2023, or later, and who now reside in Oklahoma. Prior to the federal law changes, the requirement for SoonerCare was to grant eligibility to former foster care youth who were enrolled in Medicaid when they aged out of foster care in Oklahoma.

CONTACT PERSON:

Sandra Puebla, Deputy State Medicaid Director, 405-227-3465, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S.,

SECTION 253(F), WITH A LATER EFFECTIVE DATE OF JANUARY 1, 2023:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIP

317:35-5-2. Categorically related programs

(a) ~~In order to be eligible for SoonerCare, an individual must first meet the description of a member eligibility group. For individuals related to the aged, blind, or disabled groups, categorical relationship is established using the same definitions of age, disability and blindness as used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is an SSA/SSI recipient in current payment status (including presumptive eligibility), a Temporary Assistance for Needy Families (TANF) recipient, an adoption assistance or kinship guardianship assistance recipient, or is under age nineteen (19), categorical relationship is automatically established. For individuals related to expansion adults the categorical relationship is established and defined by 42 Code of Federal Regulations (C.F.R.) § 435.119. Categorical relationship to the pregnancy group is established when the determination is made by medical evidence that the individual is or has been pregnant. Verification of pregnancy is only required if the individual's declaration that she is pregnant is not reasonably compatible with other information available to the agency. Pregnancy related services include all medical services provided within the scope of the program during the prenatal, delivery and postpartum periods for women in this pregnancy group; see Subchapter 22 of this Chapter for services for unborn children covered under Title XXI. For an individual age nineteen (19) or over to be related to the parent and caretaker relative group, the individual must have a minor dependent child. For an individual to be related to the former foster care children group, the individual must not be eligible for the Title XIX pregnancy or parent or caretaker relative groups, must be aged nineteen (19) to twenty six (26), and must have been receiving SoonerCare as a foster care child when he/she aged out of foster care in Oklahoma. There is no income or resource test for the former foster care children group. Categorical relationship to refugee services is established in accordance with OAC 317:35-5-25. Categorical relationship for the Breast and Cervical Cancer (BCC) treatment program is established in accordance with Subchapter 21 of this Chapter. Categorical relationship for the SoonerPlan family planning program is established in accordance with OAC 317:35-5-8. Categorical relationship for pregnancy related benefits covered under Title XXI is established in accordance with Subchapter 22 of the Chapter. Benefits for pregnancies covered under Title XXI medical services are provided within the scope of the program during the prenatal, delivery and postpartum care when included in the global delivery payment. To be eligible for SoonerCare benefits, an individual~~

must be related to one (1) of the following eligibility groups and as defined above in this Section:

- (1) Aged;
- (2) Disabled;
- (3) Blind;
- (4) Pregnancy;
- (5) Children, including newborns deemed eligible;
- (6) Parents and caretaker relatives;
- (7) Refugee;
- (8) BCC treatment program;
- (9) SoonerPlan family planning program;
- (10) Benefits for pregnancies covered under Title XXI;
- (11) Former foster care children; or
- (12) Expansion adults.

(b) ~~The Authority may provide SoonerCare to reasonable categories of individuals under age twenty one (21).~~

~~(1) Individuals eligible for SoonerCare benefits include individuals between the ages of nineteen (19) and twenty one (21):~~

~~(A) For whom a public agency is assuming full or partial financial responsibility who are in custody as reported by OKDHS and in foster homes, private institutions or public facilities; or~~

~~(B) In adoptions subsidized in full or in part by a public agency; or~~

~~(C) Individuals under age twenty one (21) receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age twenty one (21) are provided under the State Plan and the individuals are supported in full or in part by a public agency; or~~

~~(2) Individuals eligible for SoonerCare benefits include individuals between the ages of eighteen (18) and twenty one (21) if they are in custody as reported by OKDHS on their eighteenth (18th) birthday and living in an out of home placement.~~

(a) In order to be eligible for SoonerCare, an individual must first meet the description of a member eligibility group.

(1) For individuals related to the aged, blind, or disabled groups, categorical relationship is established using the same definitions of age, disability, and blindness as used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits.

(2) If the individual is a SSA/SSI recipient in current payment status (including presumptive eligibility), a Temporary Assistance for Needy Families (TANF) recipient, an adoption assistance or kinship guardianship assistance recipient, or is under age nineteen (19), categorical relationship is automatically established.

(3) For individuals related to expansion adults the categorical relationship is established and defined by 42 Code of Federal Regulations (C.F.R.) § 435.119.

(4) Categorical relationship to the pregnancy group is established when the determination is made by medical evidence that the individual is or has been pregnant. Verification of pregnancy is only required if the individual's

declaration that she is pregnant is not reasonably compatible with other information available to the agency. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and postpartum periods for women in this pregnancy group; see Subchapter 22 of this Chapter for services for unborn children covered under Title XXI.

(5) For an individual age nineteen (19) or over to be related to the parent and caretaker relative group, the individual must have a minor dependent child.

(6) For an individual to be related to the former foster care children group, the individual must have been receiving Medicaid benefits as a foster care child in Oklahoma or another state when he/she attained the age of eighteen (18), or aged out of foster care, until he/she reaches the age of twenty-six (26). If the individual aged out of foster care in a state other than Oklahoma, the date of ageing out had to occur on January 1, 2023, or later, and the individual must now be residing in Oklahoma. There is no income or resource test for the former foster care children group.

(7) Categorical relationship to refugee services is established in accordance with OAC 317:35-5-25.

(8) Categorical relationship for the Breast and Cervical Cancer (BCC) treatment program is established in accordance with Subchapter 21 of this Chapter.

(9) Categorical relationship for the SoonerPlan family planning program is established in accordance with OAC 317:35-5-8.

(10) Categorical relationship for pregnancy related benefits covered under Title XXI is established in accordance with Subchapter 22 of the Chapter. Benefits for pregnancies covered under Title XXI medical services are provided within the scope of the program during the prenatal, delivery and postpartum care when included in the global delivery payment.

(b) To be eligible for SoonerCare benefits, an individual must be related to one (1) of the following eligibility groups and as defined above in this Section:

- (1) Aged;
- (2) Disabled;
- (3) Blind;
- (4) Pregnancy;
- (5) Children, including newborns deemed eligible;
- (6) Parents and caretaker relatives;
- (7) Refugee;
- (8) BCC treatment program;
- (9) SoonerPlan family planning program;
- (10) Benefits for pregnancies covered under Title XXI;
- (11) Former foster care children; or
- (12) Expansion adults.

(c) The Authority may provide SoonerCare to reasonable categories of individuals under age twenty-one (21).

(1) Individuals eligible for SoonerCare benefits include individuals between the ages of nineteen (19) and twenty-one (21):

(A) For whom a public agency is assuming full or partial financial responsibility who are in custody as reported by Oklahoma Human Services (OKDHS)

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and in foster homes, private institutions or public facilities; or

(B) In adoptions subsidized in full or in part by a public agency; or

(C) Individuals under age twenty-one (21) receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age twenty-one (21) are provided under the State Plan and the individuals are supported in full or in part by a public agency; or

(2) Individuals eligible for SoonerCare benefits include individuals between the ages of eighteen (18) and twenty-one (21) if they are in custody as reported by OKDHS on their eighteenth (18th) birthday and living in an out-of-home placement.

[OAR Docket #22-866; filed 11-8-22]

TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #22-803]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- 442:1-1-1. Purpose [NEW]
- 442:1-1-2. Notice [NEW]
- 442:1-1-3. Record of hearing [NEW]
- 442:1-1-4. Duty of disclosure [NEW]
- 442:1-1-5. Appearance of parties [NEW]
- 442:1-1-6. Failure to appear [NEW]
- 442:1-1-7. Summary suspension of licensee [NEW]
- 442:1-1-8. Pleadings [NEW]
- 442:1-1-9. Failure to comply [NEW]
- 442:1-1-10. Discovery [NEW]
- 442:1-1-11. Emergency actions [NEW]

AUTHORITY:

Executive Director of the Oklahoma Medical Marijuana Authority; 63 O.S. § 420-430

ADOPTION:

October 31, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 1, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The proposed emergency rules fill a regulatory void created by the implementation of SB 1543; The emergency rules are intended to ensure consistent process is afforded both the Agency as well as commercial licensees subject to administrative actions, penalties, fines, and adverse agency orders affecting licenses. Permanent rules implementing the requirements set forth in the new legislation cannot be promulgated until 2023.

GIST/ANALYSIS:

The amendments establish administrative rules governing proceedings before the agency, including provisions regarding proper notice, pleadings, disclosure requirements, and appearance by parties.

CONTACT PERSON:

Ashley Crall, Senior Policy Analyst and Legislative Liaison, Oklahoma Medical Marijuana Authority, 2501 N. Lincoln Blvd., OK 73105, 405-568-5766. Ashley.Crall@omma.ok.gov.

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):

442:1-1-1. Purpose

These rules are promulgated to provide due process to parties appearing before the Authority and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned administrative law judge has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

442:1-1-2. Notice

Adequate notice of any hearing in accordance with these rules shall be given to every summoned person or entity. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

442:1-1-3. Record of hearing

All proceedings shall be recorded. A written transcript or a copy of the tape recording shall be made available to any person or entity alleged to have committed a violation of these rules or who is otherwise a party to an action upon written request and payment of costs for reproduction.

442:1-1-4. Duty of disclosure

It is the duty and obligation of every licensee to make full disclosure at any hearing of any knowledge of a violation of any law or of the rules and regulations of the Authority. No person may refuse to testify at any hearing on any relevant matter, except in the proper exercise of a legal privilege, nor shall any person testify falsely.

442:1-1-5. Appearance of parties

All parties to a proceeding must enter an appearance or may be determined to have waived their right to appear. Corporate entities, limited liability companies, other business entities, and governmental units or entities may appear only by an attorney licensed to practice law in Oklahoma or by an out-of-state attorney admitted to practice before the Agency pursuant to the rules of the Oklahoma Bar Association.

442:1-1-6. Failure to appear

The license of any licensee or summoned person or entity who fails to appear before the assigned administrative law judge after having been ordered personally or in writing to do so may be suspended pending appearance before the assigned administrative law judge. Nonappearance of a summoned person or entity after adequate notice may be construed as a waiver of right to be present at a hearing.

442:1-1-7. Summary suspension of licensee

(a) If the Executive Director or assigned administrative law judge finds that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, summary suspension of any licensee may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in the Administrative Procedures Act, 75 O.S., §§ 301 through 326.

(b) A licensee whose license has been summarily suspended may make a written request for a hearing on the summary suspension not later than ten (10) days after the license was summarily suspended.

(c) The assigned administrative law judge shall conduct a hearing on the summary suspension promptly and in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling with the burden on the licensee to show good cause why the suspension should be set aside.

442:1-1-8. Pleadings

(a) Pleadings shall be filed with the Authority and include appeals, applications, petitions, answers, complaints, exceptions, replies and motions. Submissions received after 5:00 p.m., CST or CDT, shall be deemed filed on the next regular business day.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A party filing a pleading shall, by certified mail, email, or hand deliver, a copy of the pleading to each party of record. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the pleading from the record.

(d) An objection to a defect, omission or fault in the form or content of a pleading must be specifically stated in a motion filed not later than seven (7) days before the date of the hearing. A party who fails to timely file an objection under this subsection waives the objection.

(e) The assigned administrative law judge shall decide any motion or application without hearing based upon the written submissions of the parties unless the assigned administrative

law judge determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.

(f) The tribunal may resolve any dispute or controversy by full or partial summary adjudication when the tribunal is satisfied that there is no reasonable dispute as to a material fact, or the reasonable inferences that may be drawn from material facts, or if only questions of law are involved. If the tribunal's summary adjudication and resolution does not dispose of all the issues pending in the action then it must recite the issues remaining for determination in its decision granting partial summary relief.

(g) Confidential information filed with or submitted to the Authority or administrative law judge in conjunction with any proceeding pursuant to the 63 O.S. §§ 420 et seq., the Oklahoma Medical Marijuana and Patient Protection Act at 63 O.S. §§ 427.1 et seq., Medical Marijuana Waste Management Act, 63 O.S. §§ 428 et seq and the Oklahoma Administrative Code ("OAC") 442, shall not constitute a public record and shall be sealed by the Court

442:1-1-9. Failure to comply

Failure or refusal to comply with an order from the administrative law judge, including a consent order, may result in the imposition of sanctions against the offending party. In addition, the Authority may seek enforcement by District Court order.

442:1-1-10. Discovery

Discovery shall not be commenced unless a scheduling order is entered in the case and the tribunal determines that discovery is necessary for the resolution of the issues. Discovery shall be completed in accordance with the scheduling order entered in the case. The tribunal may set the total permitted number of written discovery including interrogatories, requests for production and requests for admission based on the needs of the case. The tribunal may limit the frequency, scope, and manner of depositions based on the needs of the case.

442:1-1-11. Emergency actions

When the Executive Director or an assigned administrative law judge finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action may be ordered. Such order shall be served on every named party by certified mail or by personal service at an address listed on Agency records. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the pleading from the record.

[OAR Docket #22-803; filed 11-1-22]

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TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY CHAPTER 10. MEDICAL MARIJUANA REGULATIONS

[OAR Docket #22-804]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions [NEW]
- Subchapter 2. Medical Marijuana Licenses [NEW]
- Subchapter 3. Transporter License [NEW]
- Subchapter 4. Research Facilities and Education Facilities [NEW]
- Subchapter 5. Medical Marijuana Businesses [NEW]
- Subchapter 6. Commercial Licensees [NEW]
- Subchapter 7. Packaging, Labeling, and Advertising [NEW]
- Subchapter 8. Laboratory Testing [NEW]
- Subchapter 9. Waste Disposal Facilities [NEW]
- Subchapter 10. Receivership [NEW]

AUTHORITY:

Executive Director of the Oklahoma Medical Marijuana Authority; 63 O.S. § 420-430

ADOPTION:

October 31, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 1, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The proposed emergency rules implement legislative changes mandated by SB 1543; address changes in statute under 63 OS. § 427.23 et seq.; implement legislative changes mandated by HB 3208, SB 1511, and SB 1726; implement legislative changes mandated by HB 3019, SB 1367, and SB 1737; address changes and/or new requirements in statute under 63 OS. § 422 et seq., 63 OS. § 425 et seq., and 63 O.S. § 427 et seq. The emergency rules are intended to ensure the safety of medical marijuana and medical marijuana products sold to consumers and to prevent inversion and diversion and unlawful distribution of medical marijuana and medical marijuana products. Permanent rules implementing the requirements set forth in the new legislation cannot be promulgated until 2023.

GIST/ANALYSIS:

The amendments establish Oklahoma Medical Marijuana Authority as an independent entity as required under SB 1543. The rules adjust references from OAC 442:10-1-1 to OAC 442: Appendix E, replacing: Oklahoma State Department of Health with Oklahoma Medical Marijuana Authority, Department with Authority, and Commissioner with Executive Director. New requirements that commercial growers are prohibited from being within 1,000 feet of a school are adjusted in OAC 442:10-9-3(e)(5). The definition of "public school" is amended to include technology centers in OAC 442:10-1-4. Language establishing a moratorium on processing and issuing new medical marijuana business licenses for growers, processors and dispensaries beginning August 1, 2022 is added to OAC 442:10-5-3(h). New packaging standards allowing transparent packaging and requiring the use of an exit package and specific package warning labels are added to OAC 442:10-7-1(d). Enhanced penalties for unlawful diversion of product by businesses and patients is added to OAC 442:10-2-9, OAC 442:10-4-6, OAC 442:10-5-6.1, and OAC 442:10, Appendix C. The requirement that medical marijuana commercial grow licensees who operate an outdoor medical marijuana facility register with the Oklahoma Department of Agriculture, Food, and Forestry as an environmentally sensitive crop owner is added to OAC 442:10-5-1.1. The requirement that commercial grower licenses to post signage at the site of the commercial grow operation is added to OAC 442:10-6-1. Provisions regarding the embargo of medical marijuana must be corrected to no longer conflict with the provisions of 63 O.S. § 427.24. Amendments to OAC 442:10-5-2(e)

govern material changes that affect a licensee's qualifications for licensure and clarifies that licensees cannot operate under the conditions of a material change until approved in writing by the Authority. Amendments to OAC 442:10-5-8 remove references to the Medical Marijuana Advisory Council and renumber the subsequent food safety standards for processors section to conform, adjusting internal citations throughout.

CONTACT PERSON:

Ashley Crall, Senior Policy Analyst and Legislative Liaison, Oklahoma Medical Marijuana Authority, 2501 N. Lincoln Blvd., OK 73105, 405-568-5766. Ashley.Crall@omma.ok.gov.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA MEDICAL MARIJUANA AUTHORITY, 2501 N. LINCOLN BLVD., OKLAHOMA CITY, OKLAHOMA 73105 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY

The amendments establish Oklahoma Medical Marijuana Authority as an independent entity as required under SB 1543. The rules adjust references from OAC 442:10-1-1 to OAC 442: Appendix E, replacing: Oklahoma State Department of Health with Oklahoma Medical Marijuana Authority, Department with Authority, and Commissioner with Executive Director. New requirements that commercial growers are prohibited from being within 1,000 feet of a school are adjusted in OAC 442:10-9-3(e)(5). The definition of "public school" is amended to include technology centers in OAC 442:10-1-4. Language establishing a moratorium on processing and issuing new medical marijuana business licenses for growers, processors and dispensaries beginning August 1, 2022 is added to OAC 442:10-5-3(h). New packaging standards allowing transparent packaging and requiring the use of an exit package and specific package warning labels are added to OAC 442:10-7-1(d). Enhanced penalties for unlawful diversion of product by businesses and patients is added to OAC 442:10-2-9, OAC 442:10-4-6, OAC 442:10-5-6.1, and OAC 442:10, Appendix C. The requirement that medical marijuana commercial grow licensees who operate an outdoor medical marijuana facility register with the Oklahoma Department of Agriculture, Food, and Forestry as an environmentally sensitive crop owner is added to OAC 442:10-5-1.1. The requirement that commercial grower licenses to post signage at the site of the commercial grow operation is added to OAC 442:10-6-1. Provisions regarding the embargo of medical marijuana must be corrected to no longer conflict with the provisions of 63 O.S. § 427.24. Amendments to OAC 442:10-5-2(e) govern material changes that affect a licensee's qualifications for licensure and clarifies that licensees cannot operate under the conditions of a material change until approved in writing by the Authority.

[OAR Docket #22-804; filed 11-1-22]

TITLE 485. OKLAHOMA BOARD OF NURSING CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #22-845]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 11. Disciplinary Action
- 485:10-11-4 [AMENDED]

AUTHORITY:

Oklahoma Board of Nursing; 59 O.S., §§ 567.2 (A), 567.4(F), 567.8

ADOPTION:

September 27, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

November 7, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rule changes to 485:10-11-4 are necessary as an emergency measure to comply with amended law codified in 59 O.S. § 4000.1 that occurred with the passage of Senate Bill 1691, signed by Governor Stitt on May 16, 2022.

GIST/ANALYSIS:

The promulgation of emergency rules is aimed at compliance with changes in statutory law, specifically 59 O.S. § 4000.1. The proposed changes in OAC 485:10-11-4(a) and (b) are specific to determination of eligibility of licensure. Note that the condition of "initial" has been removed from determination.

The proposed rule changes in OAC 485:10-11-4(d) remove barriers to licensing by decreasing the list of felony convictions disqualifying individuals from retaining or becoming licensed in OK.

OAC 485:10-11-4(e) include a list of felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma if a conviction or plea of guilty or nolo contendere for which less than five years has elapsed since the date of the conviction, plea, or release from incarceration, whichever is later.

CONTACT PERSON:

Jackye Ward, Deputy Director, (405) 962-1809, 2501 North Lincoln Boulevard, Suite 207, Oklahoma City, OK 73105

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 11. DISCIPLINARY ACTION

485:10-11-4. Licensure or certification of individuals with criminal history

(a) This section establishes the criteria utilized by the Board in determining the effect of criminal history on eligibility for nursing licensure or Advanced Unlicensed Assistant (AUA) certification and implements the requirements of Oklahoma Statutes Title 59 Sections 567.1. *et seq.* and 4000.1 (2019)(2022). This section applies to:

- (1) all currently licensed nurses and holders of an AUA certificate;
- (2) all individuals seeking to obtain a nursing license or AUA certificate; and
- (3) all individuals seeking an initial determination of their eligibility for nursing licensure or AUA certification.

(b) The felonies listed below in ~~subsection (e)~~ subsections (d) and (e) disqualify an individual from retaining licensure or becoming licensed as a nurse or retaining certification or becoming certified as an AUA in Oklahoma. When making a determination the Board will give consideration as set forth within 59 O.S. § 4000.1(B). ~~However, subsection (e) Subsections (d) and (e) is~~ are not an exhaustive or exclusive list of crimes, both felonies and misdemeanors resulting in a conviction or a deferred sentence, that may result in discipline from the Board of Nursing, up to and including revocation.

The felonies listed in ~~subsection (e)~~ subsections (d) and (e) disqualify an individual because they substantially relate to the practice of nursing and pose a reasonable threat to public safety for the reasons stated below.

- (1) **The practice of nursing is a unique profession.** Licensees and certificate holders practice nursing autonomously in a wide variety of settings and provide care to patients who are, by virtue of their illness or injury, physically, emotionally, and/or financially vulnerable. These patients often include the elderly, children, those with mental or cognitive disorders, sedated or anesthetized patients, and/or disabled or immobilized individuals. Individuals who have engaged in criminal conduct place patients, healthcare employers and employees, and the public at risk of harm.
- (2) **Crimes involving fraud and/or theft.** Licensees and certificate holders often have unfettered access to patients' privileged information, financial information, and valuables, including but not limited to medications, money, jewelry, credit cards/checkbook, and/or sentimental items. The practice of nursing continues 24 hours per day in all healthcare settings, including those where there is often no direct supervision of the individual. Patients in these healthcare settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a licensee or certificate holder. When an individual has engaged in criminal behavior involving fraud and/or theft, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk. As such, crimes involving any type of fraud and/or theft are highly relevant to an individual's ability to provide safe nursing care.
- (3) **Crimes involving sexual misconduct.** Licensees and certificate holders frequently provide nursing care to partially clothed or fully undressed patients, who are particularly vulnerable to exploitation. Due to the intimate nature of nursing care, professional boundaries in the practice of nursing are extremely important. When an individual has engaged in criminal behavior involving any type of sexual misconduct, the Board is mindful that similar misconduct may be repeated in healthcare settings. As such, crimes involving any type of sexual misconduct are highly relevant to an individual's ability to provide safe nursing care.
- (4) **Crimes involving lying, falsification, and/or deception.** Licensees and certificate holders are required to accurately and honestly report and record information in a variety of places, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as to report errors in their own nursing practice. When an individual has engaged in criminal behavior involving lying, falsification, and/or deceptive conduct, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk of harm. As such, crimes involving any type of lying, falsification

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and/or deception are highly relevant to an individual's ability to provide safe nursing care.

(5) **Crimes involving drugs and/or alcohol.** Licensees and certificate holders have a duty to their patients to provide safe, effective nursing care and to be able to practice safely. Individuals who have a substance use disorder may have impaired judgment and motor skills and are at risk for harming their patients and/or the public. Licensees and certificate holders have access to many medications and drugs and those with substance use disorders may misuse or steal drugs. Individuals affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner, thus putting their patients at risk. This danger is heightened when the licensee or certificate holder works in an autonomous setting where other healthcare providers are not present to intervene for the patient or the public. As such, crimes related to the use or possession of drugs or alcohol are highly relevant to an individual's fitness to practice.

(6) **Crimes involving violence and/or threatening behavior.** Licensees and certificate holders provide care to the most vulnerable of populations, including patients who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the caregiver-patient relationship for their daily care. When an individual has engaged in violent or threatening criminal behavior, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, crimes involving violence and threatening behavior are highly relevant to an individual's fitness to practice.

(c) All crimes listed in this ~~subsection~~ subsections (d) and (e) are as described in Titles 21, 47 and 63 of the Oklahoma Statutes. In addition, the Board recognizes and gives similar treatment to similar offenses charged in other jurisdictions.

(d) Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma include:

- (1) Crimes involving fraud, theft, lying and/or falsification.
 - ~~(A)~~ Robbery 21 O.S. § 791 et seq.
 - ~~(B)~~ ~~Falsely personating another to gain money or property 21 O.S. § 1532.~~
 - ~~(C)~~ ~~Identity theft 21 O.S. § 1533.1.~~
- (2) Crimes involving sexual misconduct.
 - (A) Human Trafficking 21 O.S. § 748.
 - (B) Trafficking in children 21 O.S. § 866.
 - (C) Incest 21 O.S. § 885.
 - (D) Forcible sodomy 21 O.S. § 888.
 - (E) Indecent exposure, indecent exhibitions, obscene material or child pornography, solicitation of minors 21 O.S. § 1021.
 - (F) Procure, cause the participation of a minor in any child pornography, buys, or knowingly possesses, procures, manufactures, or causes to be sold or distributed child pornography 21 O.S. §§ 1021.2 and 1024.2

(G) Commercial sale or distribution of pornography 21 O.S. § 1040.13.

(H) Soliciting/offering sex with minor 21 O.S. § 1040.13a.

(I) Offering or transporting one under 18 for sex 21 O.S. § 1087.

(J) Child Prostitution - unlawful detainment in prostitution house 21 O.S. § 1088.

(K) Lewd or indecent proposals to minor, sexual battery of minor 21 O.S. § 1123.

~~(L)~~ ~~Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.~~

(3) Crimes involving drugs and/or alcohol.

~~(A)~~ ~~Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.~~

~~(B)~~ ~~Drug Aggravated trafficking in subsection C of 63 O.S. § 2-415.~~

(4) Crimes involving threats, violence and/or harm to another individual.

(A) Assault, battery, or assault and battery with a dangerous weapon 21 O.S. § 645.

(B) Aggravated assault and battery 21 O.S. § 646.

(C) Aggravated assault and battery on a law officer 21 O.S. § 650.

~~(D)~~ ~~Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.~~

~~(E)~~ Murder, first or second degree 21 O.S. §§ 701.7 and 701.8.

~~(F)~~ Manslaughter, first degree 21 O.S. § 711.

~~(G)~~ Kidnapping 21 O.S. § 741.

~~(H)~~ Extortionate kidnapping 21 O.S. § 745.

~~(I)~~ ~~Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.~~

~~(J)~~ ~~Desertion—abandonment of child under ten 21 O.S. § 851.~~

~~(K)~~ Child endangerment by permitting child abuse 21 O.S. § 852.1.

~~(L)~~ ~~Rape by instrumentation and Rape, first or second degree 21 O.S. §§ 1111.1 and 1114.~~

~~(M)~~ ~~Peeping Tom—personally or electronically 21 O.S. § 1171.~~

~~(N)~~ Stalking 21 O.S. § 1173.

~~(O)~~ ~~Endangering or injuring a person during arson or attempt 21 O.S. § 1405.~~

~~(P)~~ ~~Failure to stop after fatal accident 47 O.S. § 10-102.1.~~

~~(Q)~~ ~~Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.~~

(5) Crimes involving harm to property.

(A) Violation of Oklahoma Antiterrorism Act 21 O.S. §§ 1268 et seq.

(B) Arson, first, ~~second or third~~ degree 21 O.S. §§ 1401, ~~1402, and~~ 1403.

(C) Burglary, first degree 21 O.S. § 1431.

(e) Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma if

a conviction or plea of guilty or nolo contendere for which less than five (5) years has elapsed since the date of conviction, plea, or release from incarceration, whichever is later, include:

- (1) Crimes involving fraud, theft, lying and/or falsification.
 - (A) Falsely personating another to gain money or property 21 O.S. § 1532.
 - (B) Identity theft 21 O.S. § 1533.1.
- (2) Crimes involving sexual misconduct. Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.
- (3) Crimes involving drugs and/or alcohol.
 - (A) Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.
 - (B) Drug trafficking 63 O.S. § 2-415.
- (4) Crimes involving threats, violence and/or harm to another individual.
 - (A) Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.
 - (B) Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.
 - (C) Desertion - abandonment of child under ten 21 O.S. § 851.
 - (D) Rape in the second degree 21 O.S. § 1114.
 - (E) Mistreatment of a mental patient, as provided for in 21 O.S. § 843.1.
 - (F) Abuse of a vulnerable adult as defined in 43A O.S. § 10-103.
 - (G) Endangering or injuring a person during arson or attempt 21 O.S. § 1405.
 - (H) Failure to stop after fatal accident 47 O.S. § 10-102.1.
 - (I) Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.
- (5) Crimes involving harm to property. Arson, second or third degree 21 O.S. §§ 1402, and 1403.
- (~~f~~) To obtain ~~an Initial~~ a Determination of Eligibility pursuant to 59 O.S. § 4000.1(G-J), the required form shall be completed and filed with the Board. The fee for ~~an Initial~~ a Determination of Eligibility shall be \$95.00 and shall be submitted with the required form.
- (~~g~~) The Executive Director is authorized to close a file requesting ~~initial~~ determination of eligibility when the person seeking determination of eligibility for licensure or certification has failed to respond to a written request from the Board for information, within sixty (60) days of the written request.

[OAR Docket #22-845; filed 11-7-22]

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION
CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS**

[OAR Docket #22-819]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

765:1-1-2 [AMENDED]

765:1-1-6 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;

47 O.S. Section 582(E)(1);

75 O.S. Section 302 et seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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):

765:1-1-2. Description of Commission

(a) **Creation.** The Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission (hereinafter "Commission") is created by 47 O.S. Section 581 et seq. Applicable definitions and the powers and the duties of the Commission are set forth in 47 O.S. Section 581 et seq. and 47 O.S. Section 591.1 et seq.

(b) **Members.** The Commission shall consist of ten (10) members, one from each of the congressional districts of the state, a chair and all other members selected from the state at large.

(c) **Quorum.** Six (6) members of the Commission shall constitute a quorum and may transact any business or hold any hearing by a simple majority vote of the quorum. If a quorum is not present, the Chairman may postpone or cancel the meeting for lack of a quorum.

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765:1-1-6. Official seal

(a) The official seal of the Oklahoma Used Motor Vehicle, ~~Dismantler, and Parts—Manufactured Housing~~ Commission shall be as follows: The official Star of the State of Oklahoma bordered by the inscription, "Oklahoma Used Motor Vehicle, ~~Dismantler, and Parts—Manufactured Housing~~ Commission."

(b) The Executive Director shall be the custodian of the official seal and shall affix the imprint or the facsimile thereof to all license certificates issued by the Oklahoma Used Motor Vehicle, ~~Dismantler, and Parts—Manufactured Housing~~ Commission.

[OAR Docket #22-819; filed 11-4-22]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #22-820]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Formal Procedures

765:2-3-1 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;

47 O.S. Section 582(E)(1);

75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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. FORMAL PROCEDURES

765:2-3-1. Parties to proceeding

(a) The Executive Director or the Commission's legal counsel shall file a sworn complaint for every individual proceeding. The style of the complaint shall be: STATE OF OKLAHOMA, ex rel. THE OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND PARTS—MANUFACTURED HOUSING COMMISSION vs. PARTY'S NAME.

(b) A Respondent in an individual proceeding shall be the legal entity holding a license. A person that is a stockholder, member of a limited liability company, or stockholder in the legal entity conducting business, may also be named as a party Respondent. Any sanction which may be imposed against a licensee may be imposed against the individual Respondent where the acts giving rise to the imposition of the sanction were committed by or are legally attributable to the individual Respondent.

[OAR Docket #22-820; filed 11-4-22]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 11. USED MOTOR VEHICLE REBUILDERS

[OAR Docket #22-821]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Licensing Qualifications, Procedures and Fees

765:11-1-2 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;

47 O.S. Section 582(E)(1);

75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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 1. LICENSING
QUALIFICATIONS, PROCEDURES AND
FEES

765:11-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning:

"Rebuilder" shall be defined as set forth in 47 O.S. Section 581, as amended.

"Rebuilder's certificate" shall be the license granted by the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission to a qualified rebuilder.

"Rebuilding" shall be defined as the process of reconstructing and repairing a repairable motor vehicle to roadworthy condition, including the completion of cosmetic or aesthetic repairs.

"Repairable motor vehicle" shall include damaged vehicles with an original or salvage certificate of title, but shall not include vehicles for which a junked title has been issued; or which meet the statutory definition of a junked vehicle; or which is sold without a certificate of title; or is sold on a bill of sale or Affidavit of Ownership; or other document which indicates the vehicle is being sold for the sole purpose of dismantling the vehicle or for parts only.

[OAR Docket #22-821; filed 11-4-22]

TITLE 765. OKLAHOMA USED
MOTOR VEHICLE, DISMANTLER, AND
MANUFACTURED HOUSING COMMISSION
CHAPTER 13. TEMPORARY LICENSE
PLATES

[OAR Docket #22-822]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 1. Application
765:13-1-1 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;
47 O.S. Section 582(E)(1);
75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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 1. APPLICATION

765:13-1-1. Application

The rules enacted herein regarding temporary license plates shall apply only to dealers regulated by the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission and shall not apply to dealers in non-motorized vehicles or trailers regulated by another agency.

[OAR Docket #22-822; filed 11-4-22]

TITLE 765. OKLAHOMA USED
MOTOR VEHICLE, DISMANTLER, AND
MANUFACTURED HOUSING COMMISSION
CHAPTER 16. ADVERTISING

[OAR Docket #22-823]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
765:16-1-1 [AMENDED]
765:16-1-2 [AMENDED]
Subchapter 5. Finding of Violation
765:16-5-1 [AMENDED]
765:16-5-2 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;
47 O.S. Section 582(E)(1);
75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

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CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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 1. GENERAL PROVISIONS

765:16-1-1. Purpose

The purpose of this Chapter is to implement the intent of the legislature as declared in the Oklahoma Used Motor Vehicle, Dismantler, and PartsManufactured Housing Commission Law by regulating the advertising of the Commission licensees by requiring truthful and accurate advertising practices for the benefit of the citizens of this State.

765:16-1-2. Definitions

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

"Advertisement" means an oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio or on television or on the Internet.

"Bait advertisement" means an alluring but insincere offer to sell a product but which has as its primary purpose of obtaining leads of persons interested in buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

"Clear and conspicuous" means that the statement, representation, or disclosure is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. This standard shall be met by the following:

- (1) In print advertisement:
 - (A) The type size of 5 $\frac{1}{2}$ caps or larger shall be used in all disclosures.
 - (B) Disclosures shall be located adjacent to the price or in an area clearly marked with reference symbols. All reference symbol marks, such as asterisks, must be type size 5 $\frac{1}{2}$ caps or larger.
- (2) In an audio advertisement:
 - (A) The disclosure shall be clear and understandable in pace and volume; and,
 - (B) The disclosure shall be placed at the end of the advertisement.
- (3) In a television advertisement:
 - (A) The disclosure shall be in visual form so that the average viewer may easily read and understand it.

(B) The disclosure size shall be at least twenty (20) scan lines and each disclosure shall appear continuously on the screen for at least ten (10) seconds.

"Demonstrator" means those vehicles that are of the current or previous model year which have not been sold, titled, or registered to any type of purchaser and are used by dealership personnel for demonstration purposes. Service vehicles, courtesy cars, daily rentals, loners, driver education and factory executive cars shall not be described as "demonstrator" vehicles. Demonstrators may be advertised for sale, as such, only by a franchised dealer of the same line-make of vehicle.

"Disclosure" means required information that is clear, conspicuous, and accurate.

"Factory Executive/Official Vehicle" means a new motor vehicle with an original Manufacturer's Statement of Origin or used motor vehicle with a Certificate of Title, that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries. The advertiser shall state clearly whether the vehicle is a new or used vehicle.

"Licensee" means any person required to obtain a license from the Oklahoma Used Motor Vehicle, Dismantler, and PartsManufactured Housing Commission.

"Program vehicle" means a vehicle that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is a current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

"Rebate or cash back" means a sum of money refunded to a purchaser or for the benefit of the purchaser. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for his or her benefit.

SUBCHAPTER 5. FINDING OF VIOLATION

765:16-5-1. Violation

The violation of an advertising rule shall be considered by the Commission as a violation of the Oklahoma Used Motor Vehicle, Dismantler, and PartsManufactured Housing Commission Law, created by Title 47 of Oklahoma State Statute. In addition to the specific advertising regulations, referenced in Subchapter 3, any other advertising or advertising practices found by the Commission to be false or misleading shall be deemed violations of the law, and shall also be considered violations of the general prohibition.

765:16-5-2. Hearing

No licensee shall be held to be in violation of the foregoing rules of this Chapter including the general prohibition in OAC 765:16-3-1, except upon a finding thereof made by the Commission after notice and hearing as provided in the Oklahoma

Used Motor Vehicle, Dismantler, and ~~Parts~~ Manufactured Housing Commission Law.

[OAR Docket #22-823; filed 11-4-22]

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION
CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS**

[OAR Docket #22-824]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 1. Licensing Qualifications, Procedures and Fees
765:25-1-4 [AMENDED]
Subchapter 3. Operation
765:25-3-2 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;
47 O.S. Section 582(E)(1);
75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:25-1-4. Applicant

Every person, firm or corporation desiring to apply for an original license for the purpose of engaging in the business of an automotive dismantler and parts recycler shall apply in writing on a form to be prescribed by the Oklahoma Used

Motor Vehicle, Dismantler, and ~~Parts~~ Manufactured Housing Commission, which form shall include:

- (1) the name of the applicant,
- (2) the business name of the proposed business,
- (3) the street address of the applicant's principal place of business,
- (4) the type of business organization of the applicant whether a sole proprietorship, partnership, or corporation,
- (5) the applicant and/or business organization's financial standing,
- (6) the legal description of the proposed place of business, together with written verification from the appropriate local authorities that the place of business meets the licensing and zoning requirements of the municipality or county where located,
- (7) sales tax permit number issued by the Oklahoma Tax Commission,
- (8) authorization by the applicant for the Commission or its agent to inspect the register of purchases and sales of motor vehicles or parts thereof required to be kept by the applicant and authorization to inspect all vehicles or parts thereof on the register of purchases and sales wherever located and all vehicles or parts thereof located on applicant's property,
- (9) storm water multi-sector general permit from the Department of Environmental Quality,
- (10) National Motor Vehicle Title Information System number, and
- (11) such additional information as may be required by the Commission.

SUBCHAPTER 3. OPERATION

765:25-3-2. Records

Every automotive dismantler and parts recycler shall keep a register of all purchases and sales of motor vehicles for three (3) years from the date of purchase or sale, showing the make, model, year, style, vehicle identification number, and name and address of the purchaser or seller of the motor vehicle. Such registers shall be made available for inspection by properly identified agents or employees of the Oklahoma Used Motor Vehicle, Dismantler, and ~~Parts~~ Manufactured Housing Commission or identified law enforcement officers of the state, county and/or municipality where the business of the automotive dismantler and parts recycler is located, during reasonable business hours on business days. The inspection authority shall include the right to inspect any motor vehicle or parts thereof owned by or stored at the automotive dismantler and parts recycler's place of business. For purposes of inspection, place of business shall include the location of all vehicles used in the business of dismantling, disassembling, storing and selling of salvage motor vehicles or parts thereof, whether or not said vehicles are located on the property which legal description is contained on the automotive dismantler's application for license. If it is determined that a licensee has knowingly provided false or misleading information when

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requested to provide records, the licensee may be subject to any appropriate sanction authorized by rule or statute.

[OAR Docket #22-824; filed 11-4-22]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #22-825]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 6. Manufactured Home Inspection Fees
765:36-6-1 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;
47 O.S. Section 582(E)(1);
75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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 6. MANUFACTURED HOME INSPECTION FEES

765:36-6-1. Manufacturer's Fees

(a) Any manufactured home manufacturer who sells a new manufactured home to be shipped into or sited in the State of Oklahoma shall pay an installation inspection fee to The Commission of Seventy-Five Dollars (\$75.00) for each new single wide manufactured home and One Hundred Twenty Five Dollars (\$125.00) for each new multi floor manufactured home.

(b) The fees to be paid by a manufactured home manufacturer shall be due on the fifteenth (15th) day of the month subsequent to the month in which a home is shipped to a manufactured home dealer, or sited in, the State of Oklahoma, whichever comes first.

(c) The fees paid shall be used for the purpose of inspecting installations of new manufactured homes. The inspection may be conducted by a representative of the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission or its designee. The decision to inspect an installation shall be made by Commission staff. The decision to inspect an installation may be made by random selection, pursuant to a complaint as part of an audit or review of a particular installer or as part of an investigation.

(d) A manufactured home manufacturer, dealer, or installer shall co-operate with the Commission's employee or designee as needed to conduct an inspection of an installation for which the manufacturer, dealer, or installer may bear some responsibility for assuring that the installation was properly performed.

(e) Any fees not used for inspection of installations may be used for any other purposes of the Commission, but primarily for the education of manufactured home dealers and installers, investigation of manufactured home complaints and administration of the regulatory laws relating to the manufactured home industry.

(f) The Commission may assess a fine not to exceed One Thousand Dollars (\$1,000.00) per violation for violations of this section.

[OAR Docket #22-825; filed 11-4-22]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #22-826]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Operation
765:37-5-6 [AMENDED]
Subchapter 7. Installation Standards
765:37-7-1 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission;
47 O.S. Section 582(E)(1);
75 O.S. Section 302 et.seq.

ADOPTION:

September 13, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 28, 2022

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

HB 3271 was passed by the Legislature and signed by Governor Stitt. The effective date is November 1, 2022. The Emergency Rule is necessary to comply with deadlines in amendments to an agency's governing law.

GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

CONTACT PERSON:

John W. Maile, Executive Director (405)521-3600

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 5. OPERATION

765:37-5-6. Installer's Fees

(a) A used manufactured home inspection fee of Seventy-Five Dollars (\$75.00) shall be paid by the installer at or before the time of installation of any used manufactured home sited and installed in the State of Oklahoma, but no later than that fifteenth (15th) day of the month subsequent to the month in which the installation is performed.

(b) The fees paid shall be used for the purpose of inspecting installations of used manufactured homes. The inspection may be conducted by a representative of the Oklahoma Used Motor Vehicle, Dismantler, and Parts ~~Manufactured Housing~~ Commission or its designee. The decision to inspect an installation shall be made by Commission staff. The decision to inspect an installation may be made by random selection, pursuant to a complaint as part of an audit or review of a particular installer or as part of an investigation.

(c) A manufactured home dealer or installer shall co-operate with the Commission's employee or designee as needed to conduct an inspection of an installation for which the dealer or installer may bear some responsibility for assuring that the installation was properly performed.

(d) Any fees not used for inspection of installations may be used for any other purposes of the Commission but primarily for the education of manufactured home dealers and installers,

investigation of manufactured home complaints and administration of the regulatory laws relating to the manufactured home industry.

(e) The Commission may assess a fine not to exceed One Thousand Dollars (\$1,000.00) per violation for violation of this section.

SUBCHAPTER 7. INSTALLATION STANDARDS

765:37-7-1. Acceptable procedure

(a) Any new manufactured home stored at any location or in the possession of any entity (retailer, installer, distributor or manufacturer) for more than thirty (30) days must be temporarily supported in accordance with the manufacturer's installation instructions.

(b) All new manufactured homes to be installed in the State of Oklahoma shall be installed, including site preparation, according to HUD's Manufactured Home Model Installation Standards (24 CFR Part 3285) or DAPIA approved manufacturer installation instructions.

(c) Any previously occupied manufactured home to be installed in the state of Oklahoma may be installed according to the installation standards set forth in the manufacturer's installation manual or according to the installation standards set forth hereinafter (generic set) or an approved plan by a professional engineer or registered architect.

(d) Use of an installer not licensed at the time of the installation by the Oklahoma Used Motor Vehicle, Dismantler, and Parts ~~Manufactured Housing~~ Commission for the installation of any new or previously occupied manufactured home shall be deemed an unacceptable procedure and shall subject any dealer contracting with said unlicensed installer to any liabilities and penalties attributable to such unlicensed activity.

(e) In determining the applicable frost line for permanently installed manufactured homes, the installer shall refer to the manufacturer's installation instructions, or the local authority having jurisdiction (LAHJ).

[OAR Docket #22-826; filed 11-4-22]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2022-28.

EXECUTIVE ORDER 2022-28

Pursuant to Article VI, Section 10 of the Oklahoma Constitution, I, J. Kevin Stitt, Governor of the State of Oklahoma, hereby declare the execution of Richard Eugene Glossip stayed effective November 21, 2022.

Pursuant to 22 O.S. § 1001.1(G), which requires that a sentence of death be carried out not more than thirty (30) days after the dissolution of a stay of execution, the execution date for Richard Eugene Glossip shall be set for February 16, 2023. This stay is granted to allow time for the Oklahoma Court of Criminal Appeals to address pending legal proceedings.

This Executive Order shall be forwarded to the Director of the Oklahoma Department of Corrections and the Oklahoma Attorney General who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Great Seal of the State of Oklahoma to be affixed at Oklahoma City this 2nd day of November, 2022.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:

Brian Bingman
Secretary of State

[OAR Docket #22-818; filed 11-2-22]

1:2022-29.

EXECUTIVE ORDER 2022-29

I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare the following:

1. Severe storms, tornadoes, and straight-line winds beginning November 5, 2022, have caused damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this State.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by the severe storms, tornadoes, and straight-line winds in the State of Oklahoma that threaten the lives and property of the people of this State and the public's peace, health, and safety. The counties included in this declaration are:

Bryan, Choctaw, LeFlore, and McCurtain

4. The State Emergency Operations Plan was activated on November 4, 2022, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

Executive Orders

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 5th day of November 2022.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:
Brian Bingman
Secretary of State

[OAR Docket #22-836; filed 11-5-22]
