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Office of Administrative Rules



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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 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 1. GENERAL PROVISIONS

[OAR Docket #02-1388]

RULEMAKING ACTION:

Notice of Proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Local Project Funding [NEW]
- 240:1-5-1. Purpose [NEW]
- 240:1-5-2. Definitions [NEW]
- 240:1-5-3. Local Project funding announcement [NEW]
- 240:1-5-4. Evaluation of local project funding contract applications [NEW]
- 240:1-5-5. Affidavit of LPF officer [NEW]
- 240:1-5-6. Serial numbering of local project funding contracts [NEW]
- 240:1-5-7. Monitoring of local project funding contracts [NEW]

SUMMARY:

These new rules will allow for the Workforce Investment Act programs in Oklahoma to more easily and efficiently contract with necessary service providers in the local area where the programs are needed.

AUTHORITY:

40 O.S. Section 4-302, Executive Order 98-37, and the Oklahoma Employment Security Commission.

COMMENT PERIOD:

Persons may submit written and oral comments to Melissa Copenhaver at P O Box 53039, Oklahoma City, OK 73152-3039 during the comment period from November 15, 2002 to December 16, 2002.

PUBLIC HEARING:

No public hearing has been scheduled as of this time, but will be scheduled if a written request is submitted to the contact person listed below by: (1) at least twenty-five individuals, (2) a political subdivision, (3) an agency, or (4) an association having not less than twenty-five members no later than December 16, 2002.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

The rules may be reviewed or a copy obtained from the contact person at the address given below.

RULE IMPACT STATEMENT:

A rule impact statement for the proposed rules will be prepared, as required by law, and may be obtained from contact person listed below.

CONTACT PERSON:

Melissa Copenhaver, Rules Liaison, Oklahoma Employment Security Commission, P O Box 53039, Oklahoma City, OK 73152-3039, 405/557-7146, Fax: 405/557-5320, or e-mail at Melissa.Copenhaver@oesec.state.ok.us.

[OAR Docket #02-1388; filed 10-22-02]

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

[OAR Docket #02-1389]

RULEMAKING ACTION:

Notice of Proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. Benefits
- Part 12. Interest Waiver for Benefit Overpayments [NEW]
- 240:10-3-60. Definitions [NEW]
- 240:10-3-61. Filing a request for waiver [NEW]
- 240:10-3-62. Three year limitation, assessment of penalty and accrual of interest [NEW]
- 240:10-3-63. Request letter [NEW]
- 240:10-3-64. Initial determination [NEW]
- 240:10-3-65. Appeal of initial determination [NEW]
- 240:10-3-66. Jurisdiction and authority of Appeal Tribunal [NEW]
- 240:10-3-67. Appeal Tribunal hearing [NEW]
- 240:10-3-68. Appeal [NEW]
- 240:10-3-69. Waiver to be denied [NEW]
- Subchapter 11. Assessment Board ~~Procedures~~ Procedure
- Part 1. General Provisions
- 240:10-11-8. Judicial ethics [AMENDED]
- Subchapter 13. Appeal Tribunal Procedure
- Part 1. General Provisions
- 240:10-13-5. Jurisdiction [AMENDED]
- 240:10-13-9. Judicial ethics [AMENDED]

SUMMARY:

Rules 10-3-60 through 10-3-69 will provide a procedure for claimants to request waivers of interest on benefit overpayment

Notices of Rulemaking Intent

determinations. Rules 10-11-8 and 10-13-9 will change the Code of Judicial Conduct for appellate hearing officers from a general code for administrative law judges promulgated by the American Bar Association to a more specific code for unemployment insurance appeals that is promulgated by the National Association of Unemployment Insurance Appellate Boards. Rule 10-13-5 will modify the jurisdiction of the Appeal Tribunal by allowing for 20 days to appeal benefit overpayment determinations and adding claims for exemptions on wage levies to the items that can be considered by the Appeal Tribunal.

AUTHORITY:

40 O.S. Sections 2-615, 2-616, 2-618, 4-302 and the Oklahoma Employment Security Commission.

COMMENT PERIOD:

Persons may submit written and oral comments to Melissa Copenhaver at P O Box 53039, Oklahoma City, OK 73152-3039 during the period from November 15, 2002 to December 16, 2002.

PUBLIC HEARING:

No public hearing has been scheduled as of this time, but will be scheduled if a written request is submitted to the contact person listed below by: (1) at least twenty-five individuals, (2) a political subdivision, (3) an agency, or (4) an association having not less than twenty-five members no later than December 16, 2002.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

The rules may be reviewed or a copy obtained from the contact person at the address given below.

RULE IMPACT STATEMENT:

A rule impact statement for the proposed rules will be prepared, as required by law, and may be obtained from contact person listed below.

CONTACT PERSON:

Melissa Copenhaver, Rules Liaison, Oklahoma Employment Security Commission, P O Box 53039, Oklahoma City, OK 73152-3039, 405/557-7146, Fax: 405/557-5320, or e-mail at Melissa.Copenhaver@oesec.state.ok.us.

[OAR Docket #02-1389; filed 10-22-02]

**TITLE 490. OKLAHOMA STATE BOARD
OF EXAMINERS FOR NURSING HOME
ADMINISTRATORS
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #02-1387]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 1. Administrative Operations [AMENDED]

SUMMARY:

The Oklahoma State Board of Examiners for Nursing Home Administrators (OSBENHA) intends to adopt an addition to Rules and Regulations for Nursing Home Administrators. The proposed addition is necessary to clarify current language. This change will not affect currently licensed Nursing Home Administrators. Proposed addition includes the following: Continuing Education definition added.

AUTHORITY:

OSBENHA, 63 O.S., Sections 330.51 et seq.

COMMENT PERIOD:

Persons desiring to present their views may provide written comments by December 17, 2002 to the following address: OSBENHA, 3033 N. Walnut, Suite 100 E, OK City, OK 73105

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views orally: Tuesday, December 17, 2002 at 1:30 p.m., at the OK Dept of Libraries, OK City, OK.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by the public between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Board office.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available after November 29, 2003 at the Board office.

CONTACT PERSON:

H. E. Hendrix, 405-521-0991

[OAR Docket #02-1387; filed 10-21-02]

**TITLE 490. OKLAHOMA STATE BOARD
OF EXAMINERS FOR NURSING HOME
ADMINISTRATORS
CHAPTER 10. RULES AND REGULATIONS
FOR NURSING HOME ADMINISTRATORS**

[OAR Docket #02-1386]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. Rules and Regulations for Nursing Home Administrators [AMENDED]

SUMMARY:

The Oklahoma State Board of Examiners for Nursing Home Administrators (OSBENHA) intends to adopt amendments and additions to Rules and Regulations for Nursing Home Administrators. The proposed amendments and additions are necessary to clarify current language, and to revise policy and procedures. This change will not affect currently licensed Nursing Home Administrators. Proposed

amendments and additions include the following: Continuing Education definition added. Obsolete language deleted. Provisional license continuing education hours revised. Administrator-In-Training (AIT) Exempt Status revised. Fee schedule Revised.

AUTHORITY:

OSBENHA, 63 O.S., Sections 330.51 et seq.

COMMENT PERIOD:

Persons desiring to present their views may provide written comments by December 17, 2002 to the following address: OSBENHA, 3033 N. Walnut, Suite 100 E, OK City, OK 73105

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views orally: Tuesday, December 17, 2002 at 1:30 p.m., at the OK Dept of Libraries, OK City, OK.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by the public between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Board office.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available after November 29, 2003 at the Board office.

CONTACT PERSON:

H. E. Hendrix, 405-521-0991

[OAR Docket #02-1386; filed 10-21-02]

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

[OAR Docket #02-1392]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 785:45-1-2. Definitions [AMENDED]
 - 785:45-1-4. Testing procedures [AMENDED]
 - 785:45-1-7. Wetland areas [NEW]
- Subchapter 3. Antidegradation Requirements
 - 785:45-3-2. Applications of anti-degradation policy [AMENDED]
- Subchapter 5. Surface Water Quality Standards
 - Part 1. General Provisions
 - 785:45-5-2. Beneficial uses: existing and designated [AMENDED]
 - 785:45-5-3. Beneficial uses: default designations [AMENDED]
 - 785:45-5-4. Applicability of narrative and numerical criteria [AMENDED]
 - Part 3. Beneficial Uses and Criteria to Protect Uses

- 785:45-5-12. Fish and wildlife propagation [AMENDED]
- 785:45-5-19. Aesthetics [AMENDED]
- Part 5. Special Provisions
 - 785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [AMENDED]
- Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
- Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
- Appendix E. Requirements for Development of Site Specific Criteria for Metals [REVOKED]
- Appendix E. Requirements for Development of Site Specific Criteria for Metals [NEW]

SUMMARY:

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend, or is considering amending, various provisions of Oklahoma's Water Quality Standards ("OWQS") as follows:

(1) OAC 785:45-1-4 is proposed to be amended to add language providing for approval by the U.S. Environmental Protection Agency ("EPA") Regional Administrator of certain kinds of testing procedures. This section requires methods of sample collection, preservation and analysis to be in accordance with EPA regulation and certain publications, or some other procedure approved by the Department of Environmental Quality ("DEQ") Lab Certification Program. The circumstance which created the need for the proposed amendment is that the current language, promulgated in 2001, left open the possibility that DEQ could approve a test procedure in a waste discharge permit that was contrary to 40 C.F.R. 136.3. After the 2001 amendment was submitted to the EPA for approval as a federal standard pursuant to the federal Clean Water Act, EPA disapproved this amendment and specified that language must be added to ensure the concurrence of the EPA Regional Administrator in any ad hoc testing procedure approved by DEQ. The intended effect of this amendment is to cure the potential problem cited by EPA and obtain EPA's approval of this section as amended; the proposed amendment is expected to be approved by EPA.

(2) Several provisions are proposed to be amended or added throughout OAC 785:45 to address the subject of wetlands. These proposed rules include, but are not necessarily limited to, (a) adding a definition of wetland in OAC 785:45-1-2; (b) adding a new OAC 785:45-1-7 addressing the identification of boundaries of a wetland; (c) adding new language in OAC 785:45-3-2 applying the anti-degradation policy to wetlands; (d) amending the current designations of beneficial uses for wetlands in OAC 785:45-5-3; (e) providing in several rules for applicability of certain criteria or other limitations to protect wetlands; and (f) other related provisions. The circumstance which created the need for these amendments is ambiguity regarding which beneficial uses are assigned to wetlands. The intended effect of these amendments is to designate appropriate uses for wetlands and clarify how the anti-degradation policy is applied to wetlands.

Notices of Rulemaking Intent

(3) OAC 785:45-5-19 and 785:45-5-25 are proposed to be amended to provide for implementation of the criterion for total phosphorous in "Scenic Rivers" and to clarify the applicability of this criterion. The circumstances which created the need for these amendments are that the amendments of these sections promulgated in 2002 (hereinafter referred to as the "Phosphorus Amendments") provided that "such criterion shall be fully implemented within ten (10) years as provided in a separate rule promulgated by the Board" (emphasis added). After the Phosphorus Amendments were approved by the Board, various interested persons expressed differing interpretations of the effective date and implementation of the Phosphorus Amendments. These differences of interpretation prompted the OWRB to promulgate a new OAC 785:45-5-28 on an emergency basis to prescribe how the criterion is to be implemented. The intended effect of the proposed amendments is to incorporate the substance of emergency rule 785:45-5-28 into OAC 785:45-5-19 and 785:45-5-25 so as to allow an extended period for implementing the phosphorus criterion for Scenic Rivers, to clarify the applicability of the criterion, and to allow emergency rule OAC 785:45-5-25 to expire on July 14, 2003.

(4) Appendix A, Designated Beneficial Uses for Surface Waters, is proposed to be revoked and reenacted with changes designating "nutrient-limited watersheds" for Fort Gibson Reservoir and Taylor Lake. The circumstances which created the need for these amendments are that monitoring of these lakes from 1998 through 2001 established that they both have beneficial uses which are adversely affected by excess nutrients as determined by Carlson's Trophic State Index. The monitoring results put these lakes and their watersheds within the definition of a "nutrient-limited watershed" prescribed by OAC 785:45-1-2. The intended effect of these amendments is to prioritize remedial activity in these watersheds and initiate action in the appropriate state environmental agency.

(5) Appendix E, Requirements for Development of Site Specific Criteria for Metals, is proposed to be revoked and reenacted to add new site specific criteria for copper and zinc relating to the City of Poteau discharge to the Poteau River. The circumstances which created the need for these amendments are that this discharger has completed a study which indicates that criteria more appropriate and site specific than otherwise provided in OAC 785:45 can and should be applied in its respective circumstances. The intended effect of these amendments is to provide for increased specificity in the criteria and standards which apply to this receiving stream, while maintaining water quality, as permitted by EPA and federal law.

(6) There are several amendments or new definitions in OAC 785:45-1-2 which are proposed. The circumstances which created the need for these amendments are that other amendments being proposed elsewhere in OAC 785:45 or 785:46 add, amend or refer to terms which must be defined for the first time, or use terms whose existing definitions must be modified to accommodate the amendment elsewhere. Additionally, several provisions throughout OAC 785:45 are

proposed to be amended to correct spelling, typographical, grammatical, formatting, and other errors; and to update citations. The circumstances which created the need for these amendments are that several words and terms are misspelled and several rules contain typographical, grammatical, formatting, and other errors. Several rules contain statutory, rule or other citations which have recently been or are being changed. The intended effect of these amendments is to make the rules reflect the appropriate definitions, spelling, grammar, format, citations, and otherwise to state their text accurately.

In addition to the proposed amendments and new rules described herein, it is possible that interested persons may, during the comment period, comment or request that other provisions of Chapter 45 be amended. While the Board staff is not at this time proposing any other amendments, all interested persons should be on notice that it is possible that staff may propose additional amendments or new rules for adoption by the Board if public comment indicates that such proposals are appropriate and justified.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S. 2001, § 1085.30; 27A O.S. 2001, § 1-3-101; and 82 O.S. 2001, §1085.2.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 3, 2003. In addition, persons may submit oral or written comments during the public hearing described below. Proposed amendments and new rules are scheduled to be presented to the Board at its regular meeting on February 11, 2003. According to 27A O.S. 2001, §1-1-202(A)(7), each state environmental agency shall have the opportunity to present written comment to the members of the Board at the same time staff recommendations are submitted to the Board members for review and consideration. The Board may or may not choose to consider additional comments at its February 11, 2003 meeting.

PUBLIC HEARING:

A hearing on the proposed rules is scheduled for January 3, 2003 at 2:00 P.M. in the Board Room of the Board's offices located at 3800 North Classen, Oklahoma City, Oklahoma. Persons may present their views on the proposed rules orally or in writing during the hearing.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide the Board, within the Comment Period from November 15, 2002 through January 3, 2003, 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 Derek Smithee at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 3, 2003.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be reviewed at the Board's office location at 3800 North Classen, Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the Board's office, 3800 North Classen, Oklahoma City, Oklahoma.

CONTACT PERSON:

Derek Smithee, Water Quality Programs Division Chief, 405/530-8800.

[OAR Docket #02-1392; filed 10-24-02]

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

[OAR Docket #02-1393]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 46. Implementation of Oklahoma's Water Quality Standards [AMENDED]

SUMMARY:

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend, or is considering amending, OAC 785:46 as follows:

(1) Several rules throughout OAC 785:46 are proposed to be revoked, amended or added in order to acknowledge the promulgation by the Department of Environmental Quality ("DEQ") of its own rules for implementation of the Oklahoma Water Quality Standards ("OWQS"). Several provisions of OAC 785:46 are proposed to be revoked, including but not necessarily limited to OAC 785:46-3-4, 785:46-5-4 through 785:46-5-7, 785:46-5-9, 785:46-7-4, 785:46-9-4, 785:46-9-6 through 785:46-9-8, 785:46-11-4, 785:46-11-7, and 785:46 Appendix A. Other sections, including but not necessarily limited to 785:46-1-1, 785:46-1-2, 785:46-3-1 through 785:46-3-3, 785:46-5-1 through 785:46-5-3, 785:46-7-1 through 785:46-7-3, 785:46-9-1, 785:46-9-5, and 785:46-11-1 are proposed to be amended. Additionally, a new 785:5:46-3-6 is being proposed. The circumstance which created the need for these proposed revocations and amendments is the enactment in 1999 of Enrolled Senate Bill No. 549 (the "Act") by the Oklahoma Legislature. The Act requires all state environmental agencies to promulgate Water Quality Standards Implementation Plans for their jurisdictional areas of environmental responsibility. In 2001, DEQ promulgated a

number of new rules codified at OAC 252:690 which provide for implementation of the OWQS in a variety of subject areas within DEQ's jurisdiction. A substantial portion of the DEQ implementation rules address subjects which were already addressed in OAC 785:46 but which are more appropriately governed by the DEQ rules in OAC 252:690. The intended effect of the OWRB's proposed rules and amendments is to avoid inconsistency with the Act and the DEQ implementation rules, while preserving the substance of general implementation rules which are appropriate for the OWRB to promulgate.

(2) OAC 785:46-15-3 is proposed to be amended to expand the test for beneficial use support regarding toxic substances by adding language regarding aquatic life. The circumstance which created the need for this amendment is that there is no rule providing a use support test addressing protection of aquatic life comparable to the existing rule addressing protection of human health. The same rule for use support regarding toxicants should apply to aquatic life as to human health. The intended effect of this amendment is to provide a use support test for protection of aquatic life and to make it the same as the test for protection of human health.

(3) OAC 785:46-15-5 is proposed to be amended to add language selecting a reference for determining fish tolerances. The circumstance which created the need for this amendment is that there are conflicting references available for determining fish tolerances which are used in determining the quality of an aquatic community. The intended effect of this amendment is to choose from these references and select one which was developed for and specific to the fish of Oklahoma.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S. 2001, § 1085.30; 27A O.S. 2001, §§ 1-1-202 and 1-3-101; and 82 O.S. 2001, § 1085.2.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 3, 2003. In addition, persons may submit oral or written comments during the public hearing described below. Proposed amendments and new rules are scheduled to be presented to the Board at its regular meeting on February 11, 2003. According to 27A O.S. 2001, §1-1-202(A)(7), each state environmental agency shall have the opportunity to present written comment to the members of the Board at the same time staff recommendations are submitted to the Board members for review and consideration. The Board may or may not choose to consider additional comments at its February 11, 2003 meeting.

PUBLIC HEARING:

A hearing on the proposed rules is scheduled for January 3, 2003 at 2:00 P.M. in the Board Room of the Board's offices located at 3800 North Classen, Oklahoma City, Oklahoma. Persons may present their views on the proposed rules orally or in writing during the hearing.

Notices of Rulemaking Intent

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide the Board, within the Comment Period from November 15, 2002 through January 3, 2003, 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 Derek Smithee at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 3, 2003.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be reviewed at the Board's office location at 3800 North Classen, Oklahoma

City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the Board's office, 3800 North Classen, Oklahoma City, Oklahoma.

CONTACT PERSON:

Derek Smithee, Water Quality Programs Division Chief, 405/530-8800.

[OAR Docket #02-1393; filed 10-24-02]

Gubernatorial Approvals

Upon notification of approval by the Governor of an agency's proposed PERMANENT rulemaking action, the Office of Administrative Rules (OAR) publishes a notice of such gubernatorial approval in the *Register*.
For additional information on gubernatorial approvals, see 75 O.S., Section 303.2.

**TITLE 610. STATE REGENTS FOR HIGHER
EDUCATION
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #02-1380]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Faculty Advisory Committee [REVOKED]

610:1-5-1 Purpose [REVOKED]
610:1-5-2 Membership [REVOKED]
610:1-5-3 Duties [REVOKED]
610:1-5-4 Operation guidelines [REVOKED]
610:1-5-5 Meetings [REVOKED]
610:1-5-6 Amendments [REVOKED]

GUBERNATORIAL APPROVAL:

October 10, 2002

[OAR Docket #02-1380; filed 10-16-02]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency [action]. . . . [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following 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 references 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 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 10. AGRICULTURAL PRODUCTS

[OAR Docket #02-1391]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 15. National Type Evaluation Program

35:10-15-2 [AMENDED]

35:10-15-3 [AMENDED]

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), 2-4(29), 14-33, and 14-34

DATES:

Adoption:

August 28, 2002

Approved by Governor:

October 8, 2002

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2003 unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Oklahoma Department of Agriculture, Food, and Forestry finds that a compelling public interest requires the promulgation of these rules. The promulgation of emergency rules is necessary to protect the dwindling numbers of cotton producers and cotton gins in the State of Oklahoma. This emergency promulgation is of the utmost urgency due to the imposing cotton harvest season that is approximately only one month away. Without the amendments to these rules, the cotton gin scales will be forced to receive certification from accredited companies located out-of-state that are not willing to travel to Oklahoma. The current certification requirement poses a terminal cost to a majority of the remaining cotton gins. It also prevents those wishing to upgrade their weighing systems from doing so because of the lack of desire of these foreign companies to travel to Oklahoma to perform the necessary certification, thereby also preventing the additional incentive provided for use of the scale that would otherwise be passed to the producer. Therefore, it is imperative for the protection of Oklahoma cotton producers and cotton gin operators to exempt cotton bale weighing devices from the National Type Evaluation Program (NTEP) requirements in order to avoid these costs and allow the beneficial upgrades.

ANALYSIS:

The purpose of the proposed rules is to exempt cotton bale weighing devices from NTEP requirements. The amended rules are needed to protect the few remaining cotton gins located in Oklahoma and allow those wishing to do so to upgrade the weighing devices used at these facilities, thus providing an adequate local market to the cotton producers of this state.

CONTACT PERSON:

Charles Carter, Weights and Measures, (405) 522-5968

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(D):

SUBCHAPTER 15. NATIONAL TYPE EVALUATION PROGRAM

35:10-15-2. Application

This subchapter shall apply to all classes of devices ~~and/or~~ and equipment, except for cotton bale weighing devices at cotton gins in Oklahoma, as specified by the National Conference on Weights and Measures and published in Handbook 44 and the National Institute of Standards and Technology Handbook 105-1, 105-2, and 105-3.

35:10-15-3. Certificate of Conformance

The Board shall require any weight, measure, or weighing and measuring instrument or device, except for cotton bale weighing devices at cotton gins in Oklahoma, to be issued a Certificate of Conformance prior to its use for commercial or law enforcement purposes.

[OAR Docket #02-1391; filed 10-23-02]

(format accepted 10-23-02)

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS

[OAR Docket #02-1381]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 8. Certificate of a Chiropractor and Animal Chiropractic Diagnosis and Treatment

Emergency Adoptions

140:15-8-1 [NEW]

AUTHORITY:

Oklahoma Board of Chiropractic Examiners; 59 Section 161.2

DATES:

Adoption:

September 5, 2002

Approved by Governor:

October 8, 2002

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Oklahoma Board of Chiropractic Examiners has authority through 161.2 that allows for a chiropractor to practice Animal Chiropractic, and in order to be in compliance with the statute it was necessary to set forth rules that established standards, education, and certification in this specialty area.

ANALYSIS:

This rule 140:15-8-1 interprets what is needed to meet the requirements of certification of animal chiropractic diagnosis and treatment as set forth in 161.2 of Title 59.

CONTACT PERSON:

Beth Scott (405) 524-6223

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 (D):

SUBCHAPTER 8. CERTIFICATE OF A CHIROPRACTOR AND ANIMAL CHIROPRACTIC DIAGNOSIS AND TREATMENT

140:15-8-1. Certificate of a chiropractor and animal chiropractic diagnosis and treatment

(a) A chiropractic physician may engage in the practice of animal chiropractic diagnosis and treatment if certified to do so by the Board. A licensed chiropractic physician may provide chiropractic treatment to an animal without being certified in animal chiropractic diagnosis and treatment if the animal has been referred to the chiropractic physician by a licensed veterinarian.

(b) Animal chiropractic diagnosis and treatment means treatment that includes vertebral subluxation complex (vcs) and spinal manipulation of nonhuman vertebrates. The term "animal chiropractic diagnosis and treatment" shall not be construed to allow the:

- (1) use of x-rays,
- (2) performing surgery,
- (3) dispensing or administering of medications, or
- (4) performance of tradition veterinary care.

(c) The Board is charged by statute to establish educational criteria for certification standards in animal chiropractic diagnosis and treatment. According, the Board states that the following educational criteria will be applied to any licensed chiropractic physician who requests certification in animal chiropractic diagnosis and treatment. The criteria shall include education and training in:

- (1) Anatomy, including sacropelvic, thoracolumbar, cervical, and extremity;
- (2) Equine and canine adjustments;
- (3) Topographical laboratory;
- (4) Chiropractic basics, including history and systems review, subluxation, and vertebral subluxation complex;
- (5) Veterinary basics, including anatomy as it relates to restraint and positioning, physiology and pharmacology, metabolic and contagious diseases, and lameness;
- (6) Chiropractic and neurological diagnosis;
- (7) Radiology and biomechanics;
- (8) Proficiency in basic techniques;
- (9) Pathology;
- (10) Podiatry, including lower limb dissection;
- (11) Chiropractic and veterinary philosophy;
- (12) Professional ethics and legalities; and
- (13) Identification of animals.

(d) Any licensed chiropractic physician requesting certification in animal chiropractic diagnosis and treatment shall have completed no less than 150 hours of education and training education as set forth above.

(e) Any chiropractic physician engaged in the practice of animal chiropractic shall maintain complete and accurate records and/or patient files in their office for a minimum of three years.

*[OAR Docket #02-1381; filed 10-15-02]
(format accepted 10-21-02)*

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 15. PHYSICIAN ASSISTANTS

[OAR Docket #02-1377]

RULEMAKING ACTION:

EMERGENCY adoption.

RULES:

Subchapter 11. Prescriptive Guidelines and Drug Formulary
435:15-11-2. Drug Formulary [AMENDED]

AUTHORITY:

Title 59 O.S., Section 519.3, Board of Medical Licensure and Supervision

DATES:

Adoption:

September 19, 2002

Approved by Governor:

October 1, 2002

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2003 unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Board found that a compelling public interest required these amendments on an emergency basis. The PA law was changed effective 11/1/01 SB 32 allowing physician assistants to write for Schedule II drugs based on a drug formulary approved by the Board. The formulary is being amended to reflect the changes in law.

ANALYSIS:

The drug formulary was amended to reflect changes made to the PA law in SB32, effective November 1, 2001. This law allows physician assistants to write for Schedule II drugs pursuant to a drug formulary approved by the Board.

CONTACT PERSON:

Jan Ewing, Deputy Director, 405-848-6841, ext. 104

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 (D):

SUBCHAPTER 11. PRESCRIPTIVE GUIDELINES AND DRUG FORMULARY

435:15-11-2. Drug formulary

This Drug Formulary is for prescriptions issued by physician assistants. The Committee will, at least on an annual basis and in a timely manner, review the structure and content of the Physician Assistant Drug Formulary and make such revisions as it deems necessary. Any proposed changes must be reviewed and approved by the State Board of Medical Licensure and Supervision after consultation with the State Board of Pharmacy before becoming effective. Copies of the formulary shall be made available to any licensed pharmacy in the State of Oklahoma upon request. The Board assumes that all supervising physicians and physician assistants are completely familiar with the law and rules governing prescriptive authority of physician assistants.

- (1) **Antihistamines.** All agents are included under the antihistamines category.
- (2) **Anti-infective agents.**
 - (A) Agents included under the anti-infective agents category are:
 - (i) Amebicides
 - (ii) Antihelmintics
 - (iii) Antibiotics including:
 - (I) Aminoglycosides
 - (II) Antifungal antibiotics
 - (III) Cephalosporins
 - (IV) Miscellaneous beta lactam antibiotics
 - (V) Macrolides
 - (VI) Penicillins
 - (VII) Tetracyclines
 - (VIII) Miscellaneous antibiotics (Ref: American Hospital Formulary Service 8:12.28)
 - (iv) Antituberculosis agents
 - (v) Antivirals
 - (vi) Antimalarial agents
 - (vii) Quinolones
 - (viii) Sulfonamides

- (ix) Antitreponemal agents
- (x) Antitrichomonal agents
- (xi) Urinary anti-infectives
- (xii) Miscellaneous anti-infectives (Ref: American Hospital Formulary Service 8:40)
- (B) Agents excluded under the anti-infective agents category are:
 - (i) Chloramphenicol
 - (ii) Pediatric quinolones
 - (iii) Pediatric tetracyclines
- (3) **Antineoplastic agents.** All agents are excluded under the antineoplastic agents category.
- (4) **Autonomic agents.** ~~(A)~~ Agents included under the autonomic agents category are:
 - ~~(iA)~~ Parasympathomimetic(cholinergic) agents
 - ~~(iiB)~~ Anticholinergic agents
 - ~~(iiiC)~~ Sympathomimetic (adrenergic) agents.28
 - ~~(ivD)~~ Sympatholytic (adrenergic blocking) agents
 - ~~(v)~~ Skeletal muscle relaxants
 - ~~(viE)~~ Miscellaneous autonomic drugs (Ref: American Hospital Formulary Service 12:92)
 - ~~(B)~~ Agents excluded under the autonomic agents category are any preparations containing a Scheduled II controlled substance.
- (5) **Blood formation and coagulation agents.** Agents included under the blood formation and coagulation agents category are:
 - (A) Antianemia drugs
 - (B) Coagulants and anticoagulants
 - (C) Hemorrhologic agents
 - (D) Thrombolytic agents
- (6) **Cardiovascular agents.** Agents included under the cardiovascular agents category are:
 - (A) Cardiac drugs
 - (B) Antilipemic agents
 - (C) Hypotensive agents
 - (D) Vasodilating agents
 - (E) Sclerosing agents
- (7) **Central nervous system agents.**
 - (A) Agents included under the central nervous system agents category are:
 - (i) Analgesics and antipyretics ~~not containing a Schedule II controlled substance:~~
 - ~~(i)~~ Nonsteroidal anti-inflammatory agents
 - ~~(ii)~~ Miscellaneous analgesics and antipyretics (Ref: American Hospital Formulary Service 28:08.92)
 - ~~(iii)~~ Anticonvulsants ~~not containing a Schedule II controlled substance~~
 - ~~(iiiiv)~~ Psychotherapeutic agents ~~not containing a Schedule II controlled substance~~
 - ~~(ivv)~~ Respiratory and cerebral stimulants ~~not containing a Schedule II controlled substance~~
 - ~~(vvi)~~ Anxiolytics, sedatives and hypnotics ~~not containing a controlled substance~~
 - ~~(vii)~~ Antimanic agents
 - ~~(viii)~~ Opiate and benzodiazepine antagonists

Emergency Adoptions

- (B) Agents excluded under the central nervous system agents category are:
- (i) Schedule I ~~or H~~ opiate agonists
 - (ii) Schedule I ~~or H~~ opiate partial agonists
 - ~~(iii) Opiate antagonists~~
- (8) **Diagnostic agents.** All agents are included under the diagnostic agents category.
- (9) **Electrolyte, caloric and water balance.** Agents included under the electrolyte, caloric and water balance category are:
- (A) Acidifying agents
 - (B) Alkalinizing agents
 - (C) Ammonia detoxicants
 - (D) Replacement preparations
 - (E) Calcium-removing resins
 - (F) Potassium-removing resins
 - (G) Caloric agents
 - (H) Diuretics
 - (I) Irrigating solutions
 - (J) Uricosuric agents
- (10) **Enzymes.** All agents are included under the enzymes category.
- (11) **Expectorants, antitussives, and mucolytic agents.** ~~(A) Agents included under the expectorants, antitussives, and mucolytic agents category are:~~
- ~~(iA) Antitussives~~
 - ~~(iiB) Expectorants~~
 - ~~(iiiC) Mucolytic agents~~
 - ~~(B) Agents excluded under the expectorants, antitussives, and mucolytic agents category are any preparation containing a Schedule II controlled substance.~~
- (12) **Eye, ear, nose and throat preparations.**
- (A) Agents included under the eye, ear, nose and throat preparations category are:
- (i) Anti-infectives
 - (I) Antibiotics
 - (II) Antivirals
 - (III) Sulfonamides
 - (ii) Mouthwashes and gargles
 - (iii) Vasoconstrictors
- (B) Agents excluded under the eye, ear, nose and throat preparations category are:
- ~~(i) Any preparation containing a Schedule II controlled substance~~
 - ~~(ii) Steroid-containing Steroid-containing ophthalmic preparations~~
 - ~~(iii) Carbonic anhydrase inhibitors~~
 - ~~(iv) Ophthalmic anesthetics~~
 - ~~(v) Miotics~~
 - ~~(vi) Mydriatics~~
 - ~~(vii) Miscellaneous EENT drugs (Ref: American Hospital Formulary Service 52:36)~~
- (C) Those physician assistants whose supervising ~~physician~~ physician's scope of practice includes practices in the specialty of eye care may prescribe:
- (i) ~~Steroid-containing Steroid-containing ophthalmic preparations~~
 - (ii) Carbonic anhydrase inhibitors
 - (iii) Miotics
 - (iv) Mydriatics
- (13) **Gastrointestinal agents.** ~~(A) Agents included under the gastrointestinal agents category are:~~
- ~~(iA) Antacids and adsorbents~~
 - ~~(iiB) Antidiarrhea agents~~
 - ~~(iiiC) Antiflatulents~~
 - ~~(ivD) Cathartics and laxatives~~
 - ~~(vE) Cholelitholytic agents~~
 - ~~(viF) Digestants~~
 - ~~(viiG) Emetics~~
 - ~~(viiiH) Antiemetics~~
 - ~~(ixI) Miscellaneous GI drugs (Ref: American Hospital Formulary Service 56:40)~~
 - ~~(B) Agents excluded under the gastrointestinal agents category are any preparation containing a Schedule II controlled substance.~~
- (14) **Hormone and synthetic substitutes.**
- (A) Agents included under the hormone and synthetic substitutes category are:
- (i) Adrenals
 - (ii) Contraceptives
 - (iii) Estrogens
 - (iv) Gonadotropins
 - (v) Antidiabetic agents
 - (I) Insulins
 - (II) Sulfonylureas
 - (III) Miscellaneous antidiabetic agents (Ref: American Hospital Formulary Service 68:20.92)
 - (vi) Progestins
 - (vii) Thyroid agents
- (B) Agents excluded under the hormone and synthetic substitutes category are:
- (i) Androgens
 - (ii) Antithyroid agents
 - (iii) Parathyroid hormones and synthetics
 - (iv) Pituitary hormones and synthetics
- (15) **Oxytocics.** All agents are excluded under the oxytocics category.
- (16) **Skin and mucous membrane agents.**
- (A) Agents included under the skin and mucous membrane agents category are:
- (i) Anti-infectives
 - (I) Antibiotics
 - (II) Antivirals
 - (III) Antifungals
 - (IV) Scabicides and pediculicides
 - (V) Miscellaneous local anti-infectives (Ref: American Hospital Formulary Service 4:04.16)
 - (ii) Anti-inflammatory agents
 - (iii) Antipruritics and local anesthetics
 - (iv) Detergents
 - (v) ~~Emollients~~ Emollients, demulcents, and protectants
 - (vi) Minoxidil

- (vii) Sunscreen agents
- (B) Agents excluded under the skin and mucous membrane agents category are:
 - (i) Cell stimulants and proliferants
 - (ii) Keratolytic agents
 - (iii) ~~Keroplastic~~ Keratoplastic agents
 - (iv) Miscellaneous skin and mucous ~~mem-brance~~ membrane agents (Ref: American Hospital Formulary Service 84:36)
 - (v) Depigmenting and pigmenting agents
- (C) Those physician assistants whose supervising physician's scope of practice includes ~~practices in the specialty~~ of skin care may prescribe:
 - (i) Cell stimulants and proliferants
 - (ii) Keratolytic agents
 - (iii) ~~Keroplastic~~ Keratoplastic agents
 - (iv) Miscellaneous skin and mucous ~~mem-brance~~ membrane agents (Ref: American Hospital Formulary Service 84:36)
 - (v) Depigmenting and pigmenting agents
- (17) ~~Smooth muscle relaxants.~~ Agents included under the smooth muscle relaxants category are:
 - (A) Genitourinary smooth muscle relaxants
 - (B) Respiratory smooth muscle relaxants
- (17) Musculoskeletal agents. Agents included under the musculoskeletal agents category are:
 - (A) Anti-inflammatory agents
 - (B) Anti-osteoporosis agents
 - (C) Skeletal muscle relaxants
 - (D) Those physician assistants whose supervising physician's scope of practice includes disorders of connective tissues may prescribe anti-inflammatory agents not listed above.
- (18) **Vitamins.** All agents are included under the vitamins category.

*[OAR Docket #02-1377; filed 10-8-02]
(format accepted 10-14-02)*

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS**

[OAR Docket #02-1385]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 11. Pharmacist Administration of Immunizations [NEW]
535:10-11-1 through 535:10-11-6 [NEW]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26. (4) Principally authorized under 59 O.S. 353.7, 353.30, and 59 OS 364.

DATES:

Comment period:

July 1, 2002 - September 25, 2002

Public hearing:

September 25, 2002

Adoption:

September 25, 2002

Approved by Governor:

October 16th, 2002

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the legislature

Finding of Emergency:

The Oklahoma State Board of Pharmacy on September 25, 2002 made a declaration of emergency. The emergency that these rules address is the need to make statewide immunizations available this Fall 2002. Without these rules, some rural areas in Oklahoma will be underserved by immunizations. Further, the legislature by placing the emergency clause on the law changes that require these rules, indicated the importance of having immunizations available for Fall 2002.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

These rules will make immunizations, as prescribed by a licensed practitioner, available statewide. The legislature in the 2002 session restored the ability of pharmacists to administer drugs including immunizations. Both in Title 59 O.S. Section 353.1 in the definition of the practice of pharmacy and in Title 59 O.S. Section 353.30 these changes were passed with an emergency clause making them effective July 1, 2002.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, phone number (405) 521-3815

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(D):

SUBCHAPTER 11. PHARMACIST ADMINISTRATION OF IMMUNIZATIONS

535:10-11-1. Purpose

(a) The purpose of this Subchapter is to identify standards for the provisions of those acts or services that are necessary for pharmacists to administer immunizations ordered by a prescribing practitioner.

(b) The rules in this Subchapter implement a portion of the requirements authorized in Title 59 O.S. 353.30.

535:10-11-2. Definitions

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

"Controlled dangerous drug" or "CDS drugs" means those drugs, substances or immediate precursors that require a prescription and are scheduled under federal or state law.

"Pharmacist" or "D.Ph." means a healthcare provider duly licensed by the Oklahoma State Board of Pharmacy to engage in the practice of pharmacy pursuant to the Oklahoma Pharmacy Act.

"Prescribing Practitioner" means a licensed practitioner of allopathic or osteopathic medicine in active practice duly

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authorized or recognized by law to prescribe RX Only dangerous drugs and/or controlled dangerous substances.

"RX Only drug", "Dangerous drug", "Legend drug", or "Prescription drug" means drugs which require a prescription under federal or state law to be administered or dispensed.

535:10-11-3. D.Ph. administering of immunization requirements

(a) A D.Ph. must have completed an approved training course and received registration for immunizations with the Board prior to administering immunizations.

(b) A D.Ph. shall administer immunizations only on the patient specific prescription order of a prescribing practitioner.

(c) The Board will maintain a register of those pharmacists who have been approved for immunizations.

535:10-11-4. Immunization Registration of D.Ph.

(a) In order to obtain and maintain eligibility to administer immunizations an applicant must be registered as a D.Ph. in Oklahoma and have successfully completed an approved training described in 535:10-11-5.

(b) Each D.Ph. immunization registrant is subject to the rules regarding applicants in Subchapter 535:25-3.

(c) A D.Ph.'s shall be registered with the Board as an immunization registrant prior to administering immunizations.

(1) Each D.Ph. shall apply to be placed on the immunization register by completing a form furnished by the Board and paying the \$25 fee.

(2) A permit will be sent to the D.Ph. indicating their immunization registration.

535:10-11-5. D.Ph. training requirements for administration of immunizations

(a) The following is a list of approved pharmacist training programs for administration of immunizations:

(1) Programs that include training in immunizations offered by the two state colleges of pharmacy:

(A) Southwestern School of Pharmacy

(B) Oklahoma University, College of Pharmacy

(2) Immunization programs approved by the American Council on Pharmaceutical Education (ACPE).

(3) Immunization programs offered by the American Pharmaceutical Association (APHA).

(4) Immunization programs offered by the National Community Pharmacy Association (NCPA).

(5) Immunization programs offered by the American Society of Health System Pharmacists (ASHP).

(b) D.Ph.'s must have successfully completed one of these training courses in immunization prior to registering with the Board or administering immunizations prescribed by an Oklahoma licensed prescribing practitioner.

535:10-11-6. Records

(a) Separate records of immunizations will be kept on file by the pharmacy. The files will include, but not be limited to, the following:

(1) Patient name (Parent name, if patient is a minor)

(2) Address of patient

(3) Prescribing practitioner

(4) Immunization order

(5) Name, Manufacturer, Lot no., Expiration Date

(6) Date for continued dose regimen if required

(b) Such records must be readily available for inspection in the pharmacy.

(c) Records or reports will be sent to the State Health Department, if required.

(d) Report of immunization to prescribing physician, if requested.

[OAR Docket #02-1385; filed 10-18-02]

(format accepted 10-22-02)

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #02-1379]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 15. Oklahoma Taxable Income

Part 5. Other Adjustments to Income

710:50-15-49. Deduction for Oklahoma or federal government retirement income [NEW]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. § 203

DATES:

Adoption:

September 10, 2002 (Commission Order No. 2002-09-10-017)

Approved by Governor:

October 8, 2002

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A compelling public interest was determined to exist in that the new policy must be included in materials and fall workshops offered to taxpayers and tax preparers for the upcoming Income Tax filing season.

ANALYSIS:

The Rule makes explicit the Oklahoma tax treatment of various retirement benefits with respect to the \$5,500.00 statutory deduction available for retirement benefits, and expressly includes disability retirement benefits within the defined eligibility.

CONTACT PERSON:

Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

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

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-49. Deduction for Oklahoma or federal government retirement income

(a) General provisions. Each individual taxpayer may deduct up to Five Thousand Five Hundred Dollars (\$5,500.00) of retirement benefits paid by the State of Oklahoma or by the federal government. This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all government retirement benefit plans may not exceed Five Thousand Five Hundred Dollars (\$5,500.00) per individual.

(b) Qualifying retirement income defined. For purposes of this Section, "Oklahoma or federal government retirement income" means retirement income received from the following sources:

- (1) The Civil Service of the United States;
(2) Any Component of the Armed Forces of the United States;
(3) The Oklahoma Public Employees' Retirement System;
(4) The Oklahoma Teachers' Retirement System;
(5) Oklahoma Law Enforcement Retirement System;
(6) Oklahoma Firefighters' Pension and Retirement System;
(7) Oklahoma Police Pension and Retirement System;
(8) The Employee retirement systems created by counties pursuant to 19 O.S. §§ 951 et seq.
(9) The Uniform Retirement System for Justices and Judges;
(10) The Oklahoma Wildlife Conservation Department Retirement Fund;
(11) The Oklahoma Employment Security Commission Retirement Plan; or,
(12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) Disability retirement income. Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

[OAR Docket #02-1379; filed 10-15-02]
(format accepted 10-22-02)

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES

[OAR Docket #02-1383]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

Subchapter 1. Harvest and possession limits

- 800:10-1-5. Bag limits on fish [AMENDED]
800:10-1-7. Possession limit [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-3. Additional definitions [AMENDED]
800:10-3-4. General: hook and line, rod and reel [AMENDED]
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spears and spearguns, snagging, noodling and netting [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401, 6-303 and 6-303.1; Title 4 O.S. and Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Adoption:

September 9, 2002

Approved by Governor:

October 8, 2002

Effective:

January 1, 2003

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Recent observations by Oklahoma Department of Wildlife Conservation (ODWC) field personnel indicate paddlefish populations have come under increasing pressure due to improved fishing techniques (which allow boat anglers to target fish in staging areas prior to moving into spawning areas), proliferation of paddlefish guides, enhanced fish locating equipment with GPS capability and increases in numbers of non-resident anglers. The ODWC believes there is a compelling public interest to promulgate these rules to protect paddlefish populations and provide opportunity to collect additional creel and population data.

ANALYSIS:

These rules would reduce bag limits and restrict certain methods of taking to ensure the long-term biological integrity of Oklahoma paddlefish populations.

CONTACT PERSON:

Kim Erickson, Chief of Fisheries Division, 405/521-3721 or APA Liaison, Rhonda Hurst, Administrative Assistant, 405/522-6279.

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(D), WITH A LATER EFFECTIVE DATE OF JANUARY 1, 2003:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

- (1) Six (6) largemouth, smallmouth, and/or spotted bass or six in aggregate, except at Lake Hefner where the limit on smallmouth bass is one (1) fish 18 inches or longer, in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), at Lake Arcadia the limit is three (3), at Lake Konawa, McGee Creek Lake, Lake Nanih Waiya, Dripping Springs

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Lake, Lake Raymond Gary and Crowder Lake (Washita County) the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer, at Broken Bow, Skiatook and Tenkiller lakes where the limit on spotted bass is fifteen (15) per day, in Baron Fork Creek, Flint Creek, Illinois River upstream from the Baron Fork Creek confluence, Lee Creek, and Little Lee Creek where the aggregate limit is six (6), of which only one (1) smallmouth bass may be twelve (12) inches or longer, and in the Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the aggregate limit is six (6), of which only three (3) may be smallmouth bass.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (*Pomoxis* sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the Mountain Fork River from the State Park Dam downstream to the Re-regulation Dam where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling).

(5) Six (6) brown trout, except in the Mountain Fork River below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the Illinois River from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) One (1) Northern pike.

(7) One (1) muskellunge.

(8) Five (5) walleye, sauger and/or saugeye, or five (5) in aggregate.

(9) Fifteen (15) striped bass of which only five (5) may be twenty (20) inches or longer, except in the discharge area of Sooner Reservoir where the daily bag limit is five (5) and at Great Salt Plains Reservoir where the daily bag is twenty (20) of which only five (5) may be twenty (20) inches or longer (no culling).

(10) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir and five (5) striped bass and/or striped bass hybrids or five (5) in aggregate in the Red River below Denison Dam (no culling). This paragraph shall become effective September 1, 1996.

(11) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba

divers the daily limit is three (3) from May 1 through August 31, annually.

(12) Twenty (20) striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Great Salt Plains, Konawa, Ft. Supply, Tom Steed and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.

(13) Five (5) striped bass hybrids of which only two (2) may be 20 inches or longer in Skiatook Lake.

(14) Five (5) striped bass hybrids in Lake Carl Etling.

(15) Five (5) striped bass hybrid and/or white bass in Optima Reservoir and the discharge area of Sooner Reservoir.

(16) Twenty-five (25) white bass in Lake Texoma.

(17) One (1) paddlefish (*Polydon spathula*) per day, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. ~~Three (3) paddlefish (*Polydon spathula*) from March 15 through May 15, annually, when catch and release of paddlefish taken by any means other than by trotlines and throwlines is prohibited, and from May 16 through March 14 of the following year the daily limit is one (1) when catch and release is permitted except by use of bow and arrow and gigs.~~ Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's first and last name, address, and fishing license number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession. Persons who possess paddlefish shall keep their paddlefish separate and distinctly identifiable (plainly labeled with taker's name and address) from paddlefish possessed by another person.

(18) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(19) Other fish do not have bag or possession limits.

800:10-1-7. Possession limit

- (a) No resident or nonresident person shall have in their possession, in the field, more than one (1) daily bag limit listed in 800:10-1-5 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits in their possession at any time other than in the field, except for paddlefish which can be four (4) daily bag limits, upon leaving the state.
- (b) No person shall take and/or export out of state via land based transportation more than one hundred and fifty (150) nongame fish, including shad, for personal use as bait.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-3. Additional definitions

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

"Bow and arrow" when used for bowfishing means a long bow only (any bow except a crossbow) and an arrow having no more than three (3) points with not more than two (2) barbs on each point.

"Foul hooked" means a fish hooked other than inside the mouth.

"Gaff hook" means a handheld hook or handheld pole with a hook attached and may only be used in the landing of a fish, other than paddlefish, already hooked by other legal hook and line methods.

"Gig" means a hand-held fish spearing device mounted at the end of a shaft containing not more than three (3) points and not more than two (2) barbs on each point.

"Grabhook" means a handheld hook or handheld hand-made pole, or rope, with a single hook attached used in the initial taking of a fish.

"Jugline" means a vertical line suspended from a non-metallic or nonglass floating device which is drifting free or anchored, having no more than five (5) hooks per line and limited to twenty (20) such juglines per person.

"Limblines" means a line attached to a limb, branch or other natural object having no more than two (2) hooks attached per line and limited to twenty (20) such limblines per person.

"Noodling" means the taking of fish by use of hands only.

"Snagging" means the dragging of one (1) single hook or one (1) treble hook through the water attached to a hand-held line or fishing rod and line for the purpose of impaling fish.

"Yo-Yo" means any mechanical fishing device which automatically recoils when a fish strikes and is limited to no more than twenty (20) such devices per person.

"Unattended" means not within visual observing distance.

800:10-3-4. General: hook and line, rod and reel

- (a) All waters of the state are open to taking game and nongame fish by hook and line attached to a pole or rod and reel, trotline, throwline, or other hook and line methods, except where closed by other provisions in this Chapter.

- (b) No person may use more than seven (7) poles or rods while fishing, unless provided otherwise by other provisions in this Chapter.

(c) The use of "Gaff Hooks", or the use of any other technique or device that severely injures the fish, to assist in landing paddlefish, is prohibited.

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spears and spearguns, snagging, noodling and netting

- (a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Black Fork Creek is closed except that portion from the old Heavener Fish Hatchery Dam downstream to the confluence with Poteau River shall be open during the period beginning December 1 and continuing through May 15 of the following year.

(3) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(4) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(5) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(6) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(7) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.

(8) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(9) All Department Fishing Areas, "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

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(10) The taking of paddlefish by bow and arrow is prohibited from May 16 through March 14 of the following year, statewide.

(11) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(12) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters except, within waters of Delaware and Mayes Counties (excluding reservoir tailwaters which are closed) divers

equipped with scuba gear may use a grabhook for taking nongame fish only from June 15 through July 31.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day, and Wister and Hudson (Markham Ferry) which are open from 10 p.m. to 6 a.m.~~sunset to sunrise~~; shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater Downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the

highline crossing closed during periods when the spillway gates are closed.

~~(G) The use of "Gaff Hooks" to assist in landing paddlefish is prohibited.~~

~~(HG)~~ The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

~~(H)~~ The Black Fork Creek within the boundaries of LeFlore County is closed throughout the year, except during the period from April 15 through May 15 each year when snagging shall be lawful.

~~(H)~~ The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

~~(KJ)~~ All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

~~(LK)~~ Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) When snagging for paddlefish the hook must have the barbs removed or completely closed.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish only throughout the year in all:

- (1) Rivers and streams of the state, except:
 - (A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.
 - (B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.
 - (C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.
 - (D) The following portions of the Grand River:
 - (i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.
 - (ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.
 - (E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.
- (2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.
- (3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.
- (4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the

North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Only nets defined as gill nets, trammel nets, hoop nets, cast nets, trawl nets, handheld dip nets or haul seines may be used, provided:

(1) Hoop nets shall be no longer than ten (10) feet in length with mesh size no smaller than three (3) inch square, constructed of nonmetallic mesh only, having no more than seven (7) hoops three (3) feet in diameter or smaller.

(2) Mesh size for gill nets and trammel nets, or seines shall be no smaller than four (4) inch square mesh.

(3) All nets must be attended once every twenty-four (24) hours.

(4) Each license holder shall be limited to a maximum of three hundred (300) feet of net or a total of four (4) hoop nets in the water at any time.

(5) Each net shall have the name and address of the owner attached thereto, if the net is to be left unattended.

(6) It shall be unlawful to sell, barter, or trade, ship or transport from the State of Oklahoma any fish taken under the noncommercial netting provisions.

(7) Noncommercial netting is prohibited statewide during April and May annually.

(8) Only nongame fish may be taken in waters that are open for noncommercial netting.

(9) The following lakes and reservoirs are closed to all netting for game and/or nongame fish except under commercial fishing license:

- (A) Canton;
- (B) Wister;
- (C) Fort Gibson;
- (D) Lugert;
- (E) Oologah;
- (F) Grand Lake;
- (G) Wash Hudson;
- (H) Eufaula;
- (I) Texoma;
- (J) Arbuckle;
- (K) Carl Blackwell;
- (L) Fort Cobb;
- (M) Fort Supply;
- (N) Foss;
- (O) Greenleaf;
- (P) Heyburn;
- (Q) Hulah;
- (R) Keystone;
- (S) Murray;
- (T) Salt Plains;
- (U) Tenkiller;
- (V) Thunderbird;
- (W) Broken Bow;
- (X) Pine Creek;

Emergency Adoptions

- (Y) Robert S. Kerr;
 - (Z) Webbers Falls;
 - (AA) W.D. Mayo;
 - (BB) Chouteau;
 - (CC) Kaw;
 - (DD) Newt Graham;
 - (EE) Carl Albert;
 - (FF) Hugo;
 - (GG) Sooner;
 - (HH) Konawa;
 - (II) Ellsworth;
 - (JJ) Lawtonka;
 - (KK) Copan;
 - (LL) Sardis;
 - (MM) Optima;
 - (NN) Atoka;
 - (OO) Clayton State Park Lake;
 - (PP) Eucha;
 - (QQ) Spavinaw;
 - (RR) Arcadia;
 - (SS) McGee Creek;
 - (TT) all Department Fishing Areas and all ponds and lakes in the Ouachita National Forest;
 - (UU) all waters within the boundaries of the Wichita Mountains Wildlife Refuge; and
 - (VV) all new Federal Reservoirs.
 - (WW) all "Close To Home" fishing waters are closed.
 - (XX) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.
- (10) The following rivers and streams are closed to all netting for game and/or nongame fish except under commercial fishing license:
- (A) Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland Co.;
 - (B) Kiamichi River above Hugo Lake and from Hugo Dam downstream to the Red River;
 - (C) Caney River;
 - (D) Little River upstream from Highway 98 Bridge;
 - (E) Glover River upstream from State Highway 7;
 - (F) Mountain Fork River upstream from U.S. Highway 70 Bridge;
 - (G) Washita River upstream to U.S. Highway 77 Bridge, south of Davis;
 - (H) Red River from the Choctaw/Bryan County line upstream to Interstate 35 Bridge;
 - (I) Blue River;
 - (J) Illinois River;
 - (K) Barren Fork River;
 - (L) Pennington Creek;
 - (M) Lukfata Creek;
 - (N) Black Fork Creek;
 - (O) Lee Creek;
 - (P) Deep Fork River upstream from Lake Eufaula to Arcadia Reservoir dam;

- (Q) Poteau and Fourche Maline Rivers in LeFlore County;
- (R) McGee Creek;
- (S) Sans Bois tributary of R.S. Kerr Reservoir;
- (T) all cutoffs, oxbows, side channels and tributaries of the streams and rivers named in (A) through (S);
- (U) All the old oxbows and cutoffs of the Arkansas River in LeFlore and Sequoyah Counties;
- (V) Arkansas River;
- (W) Cimarron River and its tributaries;
- (X) Salt Creek in Osage County;
- (Y) Salt Fork River;
- (Z) the Canadian River from Eufaula Dam downstream to the confluence with Robert S. Kerr Reservoir;
- (AA) the Neosho River from the Kansas border downstream to the confluence with Webbers Falls Reservoir;
- (BB) Verdigris River; and
- (CC) Spring River.

(11) Cast netting, trawl netting and dip netting bait for personal use is lawful in all waters of this state except in Department Fishing Areas. Cast nets shall have a mesh size no greater than three-eighths (3/8) inch square mesh. Trawl nets pulled by motor driven boats may not exceed three (3) feet in diameter with no greater than three-eighths (3/8) inch square mesh.

*[OAR Docket #02-1383; filed 10-18-02]
(format accepted 10-22-02)*

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 15. COMMERCIAL HARVEST RULES, AQUATIC SPECIES

[OAR Docket #02-1384]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 11. Commercial Aquatic Production [NEW]
800:15-11-1. Purpose [NEW]
800:15-11-2. List of restricted aquatic species [NEW]
800:15-11-3 Inspection authority [NEW]
800:15-11-4. Penalties [NEW]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401, 6-303.1 and 7-602; Title 2 O.S., Sections 6-311, 6-314 and 6-317; Title 4 O.S. and Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Adoption:

September 9, 2002

Approved by Governor:

October 8, 2002

Effective:

Immediately upon Governor's Approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Senate Bill 920 transferred licensing authority of private commercial fish production from the Oklahoma Department of Wildlife Conservation(ODWC) to the Oklahoma Department of Agriculture (ODOA), effective November 1, 2002. Section 1E of the bill provides that no license for private commercial fish production shall be issued for any restricted aquatic species designated by rules promulgated by the Oklahoma Wildlife Conservation Commission. There is a compelling public interest to promulgate emergency rules which will establish a "restricted aquatic species list" prior to the November 1 effective date. This is necessary because it is in the public interest for ODWC to prevent the detrimental effects of accidental escapement of non-native nuisance aquatic species into the wild, or in the case of paddlefish and listed species, to protect the biological integrity of Oklahoma's native aquatic resources. The emergency status of the rule is necessary so that any license issued by ODOA subsequent to November 1 will be issued with copies of the "Restricted Aquatic Species List" attached.

ANALYSIS:

These rules list restricted aquatic species which shall not be propagated or offered for sale, trade, or profit in commercial aquatic operations. Inspection authority and penalties are also defined.

CONTACT PERSON:

Kim Erickson, Chief of Fisheries Division, 405/521-3721 or APA Liaison, Rhonda Hurst, Administrative Assistant, 405/522-6279.

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(D):

SUBCHAPTER 11. COMMERCIAL AQUATIC PRODUCTION

800:15-11-1. Purpose

The purpose of this chapter is to designate restricted aquatic species used in commercial propagation of aquatic species pursuant to 2 O.S., Sections 6-311, 6-314, 6-317; 29 O.S. Sections 6-303.1, and 7-602. Penalties for violations of rules are also provided.

800:15-11-2. List of restricted aquatic species

The following is a list of restricted aquatic species which shall not, in whole or in part, be propagated or offered for sale, trade, or profit, in commercial aquatic production operations licensed by the Oklahoma Department of Agriculture:

- (1) Bighead carp (Hypophthalmichthys molitrix).
- (2) Silver carp (Aristichthys nobilis).
- (3) Black carp (Mylopharyngodon piceus).
- (4) Alewives (Alosa pseudoharengus).
- (5) Rainbow smelt (Osmerus mordax).
- (6) Rudd and rudd hybrids (Scardinius spp.).
- (7) Paddlefish (Polyodon spathula)
- (8) Alligator snapping turtle (Macrolemys temminckii)
- (9) American Alligator (Alligator mississippiensis)
- (10) All other state and/or Federal endangered or threatened species, or species of special concern.

800:15-11-3. Inspection authority

Any duly authorized Oklahoma Department of Wildlife employee shall have the power to inspect, at reasonable times, records, facilities and operations of any person engaging in the commercial production of aquatic species licensed by the Oklahoma Department of Agriculture in accordance with provisions of 2 O.S., Section 6-314.

800:15-11-4. Penalties

Any person violating these Chapter provisions shall be subject to the penalties provided in 29 O.S., Section 8-104.

*[OAR Docket #02-1384; filed 10-18-02]
(format accepted 10-22-02)*

Local Projects

Executive Order 95-26 requires executive agencies to "announce the availability of contracts for local project funds by publication in the *Oklahoma Register* at least one month prior to the deadline for applications for such contracts" [EO 95-26 (5)].

A "local project funding contract" is defined as "an agreement between a state agency and either a local government or private entity, or both, in which the state agency agrees to provide funding to the local government or private entity who agrees to accomplish a public purpose. In addition, the direct benefits of such a contract accrue primarily to the local population rather than the state as a whole.... Local project funding contracts do not include contracts subject to state competitive bidding requirements." [EO 95-26 (1)].

For additional information on local projects, see Executive Order 95-26 and Attorney General Opinion 87-100.

OKLAHOMA WATER RESOURCES BOARD (OWRB)

Local Project Funding Contract Announcement

[OAR Docket #02-1390]

DESCRIPTION OF PROJECT:

The 1987 amendments to the Federal Clean Water Act provided for states to establish a Clean Water State Revolving Fund (CWSRF) to make construction and refinancing loans to eligible entities for the construction of sewage treatment and transportation facilities. The OWRB administers the CWSRF program and conducts project reviews for selecting those entities to be considered for loan funds. Since the June 18, 2002 public meeting detailing the FY 2003 CWSRF Intended Use Plan, the Lawton Water Authority has requested to be considered for a wastewater loan, in the amount of \$1,164,461, for a "partial refinance" of an FY 2002 CWSRF interim construction loan for a wastewater collection system rehabilitation project. Originally scheduled to receive a full refinancing loan upon construction completion, on October 12, 2004, the community has chosen to refinance half of the project when project construction is 50 percent complete, January 15, 2003, and half upon construction completion.

It is anticipated that the OWRB will commit to this loan agreement during state fiscal year 2003. Comments concerning this amendment to the FY 2003 Intended Use Plan will be accepted by the OWRB for 20 days following the date of this notice.

FUNDS AVAILABLE:

Approximately \$34 million is currently available in the CWSRF to assist communities finance wastewater improvements. The CWSRF is being capitalized with federal (83.3%) and state funds (16.7%).

ELIGIBILITY:

Eligible loan recipients include cities, towns, counties or the State of Oklahoma, rural sewer districts, any other political subdivision or any combination thereof. The authority for this program is established by the Federal Water Quality Act of 1987 (P.L. 100-4) and Title 82 of Oklahoma Statutes Annotated, Section 1085.

APPLICATION DEADLINE:

Entities wishing to obtain and submit a pre-application form and be included on the planning portion of the state's CWSRF Priority List may do so at any time. Final loan applications will be accepted during the fiscal year in which actual funding of the project will occur.

CONTACT PERSON:

Julie Cunningham (405) 530-8800
Financial Assistance Division
Oklahoma Water Resources Board
3800 North Classen Blvd.
Oklahoma City, Oklahoma 73118

[OAR Docket #02-1390; filed 10-22-02]

