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Gubernatorial Approvals

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

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

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

[OAR Docket #05-754]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
252:4-1-5. [AMENDED]
252:4-1-6. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-754; filed 5-3-05]

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

[OAR Docket #05-755]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 7. Environmental Permit Process
Part 7. Water Quality Division Tiers and Time Lines
252:4-7-73. [AMENDED]
252:4-7-74. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-755; filed 5-3-05]

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

[OAR Docket #05-756]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 17. Incinerators
Part 9. Commercial and Industrial Solid Waste Incineration Units
252:100-17-63. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-756; filed 5-3-05]

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

[OAR Docket #05-757]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
Part 3. Hazardous Air Pollutants
252:100-41-15. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-757; filed 5-3-05]

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

[OAR Docket #05-758]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Appendix E. Primary Ambient Air Quality Standards [REVOKED]
Appendix E. Primary Ambient Air Quality Standards [NEW]
Appendix F. Secondary Ambient Air Quality Standards [REVOKED]
Appendix F. Secondary Ambient Air Quality Standards [NEW]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-758; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #05-759]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-759; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #05-760]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-2. Incorporation by reference [AMENDED]
Subchapter 21. Fees
252:205-21-5. Fees for waste exclusion [NEW]
Subchapter 25. Additional Requirements for Excluding a Waste from a Particular Facility [NEW]
252:205-25-1. General [NEW]
252:205-25-2. Conditions applicable to approved petitions [NEW]
252:205-25-3. Conditions of exclusion [NEW]
252:205-25-4. Reconsideration of an approved petition [NEW]
252:205-25-5. Monitoring of waste approved for exclusion [NEW]
252:205-25-6. Failure to follow approval conditions [NEW]
252:205-25-7. Effective date [NEW]
Appendix D. Waste Exclusion Fees [NEW]
Appendix E. Wastes Excluded From The Lists In Subpart D of 40 CFR Part 261 As Applicable In Oklahoma [NEW]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-760; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-761]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
252:410-1-7. [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 35. Medical Use of Byproduct Material
252:410-10-35. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-761; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-762]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Radiation Machines - Common Requirements
Part 1. General Provisions
252:410-3-3. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-762; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-763]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 7. Radiation Management Authorizations; Procedures and Requirements
Part 1. General Provisions Common to All Authorizations
252:410-7-1. [AMENDED]
252:410-7-2. [AMENDED]
252:410-7-3. [AMENDED]

252:410-7-4. [AMENDED]
252:410-7-5. [AMENDED]
252:410-7-6. [AMENDED]
Part 3. Reciprocity Recognition
252:410-7-31. [AMENDED]
252:410-7-32. [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 101. Radioactive Materials Program Fees
252:410-10-101. [AMENDED]
252:410-10-110. [AMENDED]
252:410-10-118. [AMENDED]

GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-763; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-764]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 10. Radioactive Materials Program
Part 101. Radioactive Materials Program Fees
252:410-10-111. [AMENDED]

GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-764; filed 5-3-05]

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

[OAR Docket #05-765]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. Introduction
252:606-1-4. [AMENDED]

GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-765; filed 5-3-05]

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

[OAR Docket #05-766]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
252:611-1-3. [AMENDED]

GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-766; filed 5-3-05]

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

[OAR Docket #05-767]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. Introduction
252:616-1-3. Engineer Required [NEW]
Subchapter 7. Surface Impoundment Standards
252:616-7-1. Construction and maintenance [AMENDED]
Subchapter 9. Tank System Standards
252:616-9-1. ~~Tank system materials~~ Authorized use of tank systems [AMENDED]
252:616-9-2. ~~Tank system requirements~~ Tank system materials [AMENDED]
252:616-9-3. Tank system requirements [NEW]
Subchapter 11. Land Application Standards
252:616-11-1. Restrictions [AMENDED]
252:616-11-5. Recordkeeping [AMENDED]
252:616-11-6. Dust Suppression [NEW]

GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-767; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 619. OPERATION AND MAINTENANCE OF NON-INDUSTRIAL TOTAL RETENTION LAGOON SYSTEMS AND LAND APPLICATION

[OAR Docket #05-768]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [NEW]
252:619-1-1. [NEW]
252:619-1-2. [NEW]
252:619-1-3. [NEW]
252:619-1-4. [NEW]
252:619-1-5. [NEW]
Subchapter 3. Operation and Maintenance [NEW]
252:619-3-1. [NEW]
252:619-3-2. [NEW]
252:619-3-3. [NEW]
Subchapter 5. Closure Requirements [NEW]
252:619-5-1. [NEW]
252:619-5-2. [NEW]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-768; filed 5-3-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 621. NON-INDUSTRIAL FLOW-THROUGH AND PUBLIC WATER SUPPLY IMPOUNDMENTS ~~AND~~ INCLUDING LAND APPLICATION

[OAR Docket #05-769]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
252:621-1-1. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-769; filed 5-3-05]

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

[OAR Docket #05-770]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Introduction
252:631-1-3. [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-770; filed 5-3-05]

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

[OAR Docket #05-771]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Introduction
252:690-1-4. [AMENDED]
Subchapter 3. Point Source Discharges
252:690-3-11. [AMENDED]
252:690-3-14. [AMENDED]
252:690-3-26. [AMENDED]
252:690-3-29. [AMENDED]
252:690-3-34. [AMENDED]
252:690-3-41. [AMENDED]
252:690-3-42. [AMENDED]
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]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-771; filed 5-3-05]

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

[OAR Docket #05-772]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
252:710-1-12. [AMENDED]
Subchapter 3. Certification
252:710-3-31. [AMENDED]
252:710-3-32. [AMENDED]
252:710-3-37. [AMENDED]
Subchapter 5. Duties and Responsibilities
252:710-5-53. [AMENDED]
252:710-5-57. [AMENDED]
252:710-5-58. [AMENDED]
252:710-5-59. [AMENDED]
Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [REVOKED]
Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [NEW]
Appendix B. Certificate Requirements [REVOKED]
Appendix B. Certificate Requirements [NEW]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-772; filed 5-3-05]

TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION CHAPTER 40. OKLAHOMA IDENTITY THEFT PASSPORT PROGRAM

[OAR Docket #05-784]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
375:40-1-1. through 375:40-1-11. [NEW]
GUBERNATORIAL APPROVAL:
April 13, 2002

[OAR Docket #05-784; filed 5-4-05]

TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION CHAPTER 45. DONATION OF SURPLUS PROPERTY

[OAR Docket #05-785]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
375:45-1-1. through 375:45-1-7. [NEW]
GUBERNATORIAL APPROVAL:
April 13, 2002

[OAR Docket #05-785; filed 5-4-05]

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

[OAR Docket #05-749]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Program Divisions within the Department
612:1-5-3. Division of Visual Services (DVS) [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-749; filed 5-3-05]

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

[OAR Docket #05-750]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 10. Vocational Rehabilitation and Visual Services [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-750; filed 5-3-05]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 15. OKLAHOMA LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED (OLBPH)

[OAR Docket #05-751]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. OLBPH Services
612:15-3-6. Descriptive video service [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-751; filed 5-3-05]

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

[OAR Docket #05-752]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General operating procedures for the schools
Part 1. General Educational Policies
612:20-3-2. Administrative responsibility [AMENDED]
612:20-3-3. Comprehensive programming for all basic needs [AMENDED]
612:20-3-7. Discipline [AMENDED]
Part 3. Abuse, Neglect, and Inappropriate Body Contact
612:20-3-20. Reporting requirements [AMENDED]
Part 7. Student Rights [NEW]
612:20-3-49. Residential Life [NEW]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-752; filed 5-3-05]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 25. BUSINESS ENTERPRISE PROGRAM

[OAR Docket #05-753]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
612:25-2-7. State and Federal Assurances Policy of non-discrimination [AMENDED]
Subchapter 4. The State Licensing Agency
Part 1. Organization and General Operation Standards
612:25-4-1. Organization of the State Licensing Agency [AMENDED]
612:25-4-2. SLA staff responsibilities [REVOKED]
612:25-4-3. Guidelines for communication [AMENDED]
612:25-4-4. Management services provided by the State Licensing Agency [AMENDED]
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]
612:25-4-15. Training for present licensed managers [AMENDED]
Part 5. State Licensing Agency Responsibility for Business Enterprise Operations
612:25-4-25. Management of BEP equipment and fixtures [AMENDED]
612:25-4-26. Maintenance and replacement of business enterprise equipment [AMENDED]
612:25-4-27. Initial inventory and supplies [AMENDED]
612:25-4-30. Second merchandise loan [AMENDED]
Part 7. Support Services and Warehouse [REVOKED]
612:25-4-40. Overview of support services [REVOKED]
612:25-4-41. Support services personnel [REVOKED]
612:25-4-42. Warehouse operations [REVOKED]
Part 9. Assignment and Transfer of Licensed Managers
612:25-4-54. Business enterprise vacancy announcement [AMENDED]
612:25-4-55. Qualifications [AMENDED]
612:25-4-56. Applications [AMENDED]
612:25-4-57. Applicant Selection Committee [AMENDED]
612:25-4-58. ~~Interviews~~Annual Evaluation [AMENDED]
612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
612:25-4-60. Ninety day replacement [AMENDED]
612:25-4-61. Satellite/remote business enterprise locations [AMENDED]
Part 11. Business Enterprise Program Auditing and Due Process
612:25-4-72. ~~Audit procedures~~Audits [AMENDED]
612:25-4-73. Due process [AMENDED]
612:25-4-74. Probation [AMENDED]
Subchapter 6. Licensed Managers and Business Enterprise Operation
Part 3. Business Enterprises
612:25-6-15. Setting aside of funds [AMENDED]
612:25-6-18. Establishing~~Procedures to establish~~ new business enterprises [AMENDED]
Part 5. The Elected Committee of Licensed Managers
612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-753; filed 5-3-05]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 10. LICENSURE AND FEES

[OAR Docket #05-744]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists
690:10-3-4. [AMENDED]
690:10-3-5. [AMENDED]
690:10-3-6. [AMENDED]
690:10-3-7. [AMENDED]
Subchapter 9. Fees
690:10-9-2. [AMENDED]
GUBERNATORIAL APPROVAL:
March 23, 2005

[OAR Docket #05-744; filed 5-2-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #05-743]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Oklahoma Quality Jobs Program
710:85-1-3. Procedure upon qualification; reporting [AMENDED]
710:85-1-6. Qualified establishments are employers [AMENDED]
710:85-1-8. Procedure for filing claim, verification, payment, protest [AMENDED]
710:85-1-10. Limitation on incentive payments [AMENDED]
710:85-1-12. Cessation, suspension, resumption of incentive payments [AMENDED]
710:85-1-13. Qualified establishment may protest suspension of incentive payments [AMENDED]
Subchapter 3. Saving Quality Jobs Program
Part 3. Premium Payment Program
710:85-3-30. Procedure upon qualification; reporting [AMENDED]
710:85-3-32. Qualified establishments are employers [AMENDED]
710:85-3-34. Procedure for filing claim, verification, payment, protest [AMENDED]
Part 5. High Impact Projects
710:85-3-57. Qualified establishment may protest suspension of payments [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-3. Procedure upon qualification; reporting [AMENDED]
710:85-5-6. Qualified establishments are employers [AMENDED]
710:85-5-7. Transfers to Small Employer Quality Jobs Incentive Payment Fund [AMENDED]
710:85-5-8. Procedure for filing report, review, determination [AMENDED]
710:85-5-10. Payment of claim [AMENDED]
710:85-5-11. Procedure when claim cannot be verified, is revised, or is denied [AMENDED]
710:85-5-13. Limitation on incentive payments [AMENDED]
710:85-5-15. Denial, cessation, and resumption of incentive payments [AMENDED]
Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-2. Definitions [AMENDED]
710:85-7-3. Procedure upon qualification; payment [AMENDED]
Subchapter 9. Oklahoma Quality Investment Act [NEW]
710:85-9-1. Purpose [NEW]
710:85-9-2. Definitions [NEW]
710:85-9-3. Transfers to Quality Investment Payment Fund [NEW]
710:85-9-4. Procedure for filing claim, review determination [NEW]
710:85-9-5. Disclosure of information [NEW]
710:85-9-6. Limitation on incentive payments [NEW]
710:85-9-7. Incentive payments unavailable to delinquent tax reporters/remitters [NEW]
710:85-9-8. Cessation of incentive payments [NEW]
GUBERNATORIAL APPROVAL:
April 15, 2005

[OAR Docket #05-743; filed 5-2-05]

TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION
CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #05-747]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Teacher Preparation Program Accreditation
712:10-5-1. [AMENDED]
712:10-5-2. [AMENDED]
712:10-5-3. [AMENDED]
712:10-5-4. [AMENDED]
Subchapter 11. Education Leadership Oklahoma
712:10-11-1. [AMENDED]
GUBERNATORIAL APPROVAL:
March 23, 2005

[OAR Docket #05-747; filed 5-3-05]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 20. APPROPRIATION AND USE OF STREAMWATER

[OAR Docket #05-790]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Permits
785:20-7-2. Contents of regular permits [AMENDED]
Subchapter 9. Actions After Stream Water Right Obtained
785:20-9-3. Loss of rights and reversion of water to public [AMENDED]
Subchapter 11. Miscellaneous Provisions
785:20-11-9. Impoundment of water in mine pits [NEW]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-790; filed 5-6-05]

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

[OAR Docket #05-791]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-1. Licensing procedures [AMENDED]
785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells.
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observations wells, and water well test holes [AMENDED]
785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells, and water well test holes [AMENDED]
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-791; filed 5-6-05]

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

[OAR Docket #05-792]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
785:46-1-2. Definitions [AMENDED]
785:46-1-4. Testing procedures [AMENDED]
Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
785:46-9-2. Applicable mineral criteria [AMENDED]
Subchapter 15. Use Support Assessment Protocols
785:46-15-3. Data requirements [AMENDED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-8. Assessment of Agriculture support [AMENDED]
785:46-15-10. Nutrients [AMENDED]
Subchapter 17. OWRB Water Quality Standards Implementation Plan
785:46-17-3. Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses [AMENDED]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-792; filed 5-6-05]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 55. DEVELOPMENT ON STATE OWNED OR OPERATED PROPERTY WITHIN FLOODPLAINS AND FLOODPLAIN ADMINISTRATOR ACCREDITATION

[OAR Docket #05-793]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Floodplain Administrator Accreditation Program [NEW]
GUBERNATORIAL APPROVAL:
April 20, 2005

[OAR Docket #05-793; filed 5-6-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 1. OPERATIONS AND PROCEDURES

[OAR Docket #05-774]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Publications
800:1-11-1. Charges for workshops, publications and other material [AMENDED]
Subchapter 13. Hunting and Fishing ~~Licenses~~License Dealers
800:1-13-3. Dealer operating provisions [AMENDED]
800:1-13-11. Wildlife Land Stamp, also know as Fishing and Hunting Legacy Permit [NEW]
800:l1-13-13. Internet Point of Sale License System [NEW]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-774; filed 5-4-05]

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

[OAR Docket #05-775]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-775; filed 5-4-05]

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

[OAR Docket #05-776]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Commercial Turtle Harvest
800:15-9-3. General; operating provisions [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-776; filed 5-4-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #05-777]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-2. Areas open to shotgun with pellets and bow and arrow only [AMENDED]
800:25-3-4. Areas open to archery and shotgun and muzzleloading firearms [AMENDED]
Subchapter 7. General Hunting Seasons
Part 5. Upland Game
800:25-7-16. Wild turkey - Fall; legal means of taking [AMENDED]
800:25-7-18. Wild turkey - Spring; legal means of taking [AMENDED]
Part 13. Deer
800:25-7-50. General provisions for deer [AMENDED]
800:25-7-51. Deer - archery [AMENDED]
800:25-7-54. Legal firearms specifications [AMENDED]
800:25-7-55. Deer-Youth Gun Season [AMENDED]
Part 7. Falconry
800:25-7-33. General stipulations [AMENDED]
Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-91. Cherokee GMA [AMENDED]
800:25-7-93. Cookson WMA [AMENDED]
800:25-7-98. Fort Cobb WMA [AMENDED]

800:25-7-105.6. Hackberry Flat WRP [AMENDED]
800:25-7-127. Okmulgee GMA [AMENDED]
800:25-7-140. Sandy Sanders WMA [AMENDED]
800:25-7-152. Washita County WMA [AMENDED]
800:25-7-154. Waurika WMA [AMENDED]

GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-777; filed 5-4-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #05-799]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 13. Commercial Hunt Areas
800:25-13-6. Facility requirements [AMENDED]
800:25-13-10. Record requirements [NEW]
800:25-13-11. Release of wildlife requirements [NEW]

GUBERNATORIAL APPROVAL:
March 23, 2005

[OAR Docket #05-799; filed 5-6-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #05-778]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]
800:30-1-20. Restricted public use areas [AMENDED]

GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-778; filed 5-4-05]

Withdrawn Rules

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

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

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

TITLE 380. DEPARTMENT OF LABOR
CHAPTER 41. WORKERS COMPENSATION PREMIUM REDUCTION PROGRAM

[OAR Docket #05-742]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

Subchapter 3. Program Certification Procedures

380:41-3-5. Workers' compensation insurance premium reduction [AMENDED]

DATES:

Adoption:

March 30, 2005

Submitted to Governor:

April 1, 2005

Submitted to House:

April 1, 2005

Submitted to Senate:

April 1, 2005

Withdrawn:

April 26, 2005

[OAR Docket #05-742; filed 4-29-05]

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 rule[s] . . . . [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 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #05-725]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-18. [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Adoption:
February 24, 2005
Approved by Governor:
April 15, 2005
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
This is considered to be an emergency so the charter schools can present appeals of their Adequate Yearly Progress directly to the State Department of Education.
ANALYSIS:
The proposed rule change would allow charter schools to appeal Adequate Yearly Progress decisions on their behalf based on statistical or other substantial reasons, directly to the State Department of Education.
CONTACT PERSON:
Connie Holland, 405-521-3308

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 13. STUDENT ASSESSMENT

210:10-13-18. Oklahoma School Accountability System

(a) **Adequate Yearly Progress (AYP).** The Oklahoma School Accountability System shall be based on AYP. All public elementary and secondary schools and local educational agencies (LEAs) shall be accountable for student achievement and for making Adequate Yearly Progress (AYP) according to federal law. AYP will be determined by meeting or exceeding statewide performance targets for required student groups in Reading/Language Arts and Mathematics on state tests; administering tests to 95 percent of students in each required student group; and meeting statewide targets for attendance rates and graduation rates where applicable. Alternatively, schools shall make AYP by showing growth in Reading/Language Arts and Mathematics on state tests as required by Safe Harbor regulations as defined in the No Child Left Behind Act of 2001, Public Law 107-110.

(b) **Consequences of Testing Irregularities or Misconduct on Test Scores and AYP.**

(1) If the State Department of Education (SDE) Student Assessment Office receives documentation of a student cheating on a test, the student's score shall be "invalidated." The student's score report for that content area shall read "Invalidated." The "invalidated" score shall have the effect of a zero score when aggregated with scores of other students at the school, district, and state levels.

(2) If a student does not attempt the test (such as refusal to read items or mark answers, finishing in 5 minutes, or randomly marking answers), no special action shall be taken. The student's test shall be scored and the score aggregated with the rest of the scores at the school, district, and state levels according to standard procedure.

(3) If a student becomes ill during testing and is not able to complete the test, the test shall not be scored and not counted in the summary scores. The student shall be counted as absent. If an alternate form of the test is available through the OSTP, the student may be given an opportunity to take the alternate form within the same testing window. In this case, the first test shall not be scored and the alternate test shall be scored in its place. (Note: Alternate test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(4) If any violation of security provisions (Section 210:10-13-4) occurs, such violations shall be reported in writing to the Student Assessment Section of the State Department of Education and may result in a student's, a school site's, and/or a school district's test scores being declared as invalid (Section 210:10-13-4 (18). In the case of

invalidation, each invalidated score shall have the effect of a zero score and each zero score shall be aggregated with the remaining student scores at the school, district, and state levels. If the violation is not the fault of the students involved, and if an alternate form of the test is available through the OSTP, students may be given the alternate form within the same testing window at the district's expense if this is the first year for a security violation within the school and/or district in question. In the case that an alternate form is administered, the individual student score report shall reflect the scores from the alternate test (in place of the previous invalidated scores) and shall be aggregated at the school, district, and state levels. (Note: Alternate test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(5) If extreme changes in test scores or in Academic Performance Index (API) scores occur for a school or district from year to year, an investigation shall be conducted, which may include, but not be limited to, a hand erasure analysis, and results of any apparent testing irregularity or misconduct reported to the State Board of Education for possible further action, which may include but not be limited to, score invalidation.

(6) Erasures shall be identified statewide by electronic scanning of all student answer documents, and the following action shall be taken: Scores for classes whose wrong-to-right erasures exceed the state average by more than four standard deviations shall be identified for further investigation. For each class with excessive erasures, the proportion of wrong-to-right erasures to the total number of erasures will be taken into account. A report shall be made to the State Board of Education of schools where classes have been identified with excessive erasures as defined by the criteria above for possible further action, which may result in score invalidation.

(7) Steps for Dealing with Reported Testing Irregularities or Misconduct

(A) **Step One.** When report of a testing irregularity or misconduct is made to the State Department of Education Student Assessment Section, the school site and/or school district involved shall be required to respond by conducting an investigation and providing in writing to the State Department of Education Student Assessment Section an explanation of how the testing misconduct/irregularity occurred and a description of the measures taken to prevent the misconduct from occurring again.

(B) **Step Two.** The testing irregularity or misconduct shall be categorized into one of three violation categories (minor, major, and critical) according to the severity of the violation and its possible consequences. Possible consequences may include, but not be limited to, invalidation of scores, accreditation with deficiency, accreditation with warning, accreditation with probation.

(C) **Step Three.** At the end of each testing period, a testing violations report shall be prepared by the Student Assessment office for review by the State Superintendent and possible further action.

(c) **Procedures for Schools to Review AYP Data and Appeal Accountability Decisions.**

(1) As required by No Child Left Behind (NCLB) for assuring valid AYP determinations prior to release of the AYP data reports, public schools shall review, upon receipt, the component pieces of the AYP data provided by their district, the testing vendors, and/or the State Department of Education and report any inaccuracies to the entity supplying the data within the applicable timelines. If the district does not respond within the applicable timelines, the SDE shall rely on the data as presented.

(2) Upon receiving their AYP Data Reports from the SDE for use in creating their School and District Report Cards, districts and charter schools shall review the data in the AYP Data Reports and report any discrepancies from the previously approved data pieces to the Student Assessment Section of the SDE within the specified timeline. Appeals of AYP determinations contained in the AYP Data Reports shall be made at this time, as follows: According to federal regulations, if a principal of a school, or a majority of the parents of the students enrolled in a school, believe that any accountability decision contained in the AYP Data Reports is in error for statistical or other substantive reasons, the principal shall provide supporting evidence to the district after review of the data. The district or charter school must consider the evidence and if warranted, present an appeal to the SDE in writing. Charter schools shall examine their data independently and determine if an appeal of their AYP determination is warranted. If the charter school decides to appeal, the appeal may be presented directly to the State Department of Education under the timelines contained in this rule. Beginning with the 2003-04 school year the SDE must receive the appeal within ten working days of the release of the AYP Data Reports.

(3) If a school and/or district has had test scores invalidated because of a testing irregularity or misconduct with the effect of zero scores for aggregation purposes, and such action results in an API score that prevents the school and/or district from making AYP, the district or charter school may appeal this accountability decision on a first time occurrence and request placement on Probationary Status instead of receiving an API score. At the end of the next consecutive year, if the school and/or district do not make AYP, they shall not be allowed to invoke Safe Harbor and shall automatically be identified as being in School Improvement status.

(4) When the SDE receives an appeal of an accountability decision from a district on behalf of a school within the district~~,~~ or from a charter school, a committee comprised of members of the SDE School Improvement Leadership Team or others appointed by the State Superintendent shall review the evidence contained in the appeal and provide a final determination to the district in writing

within thirty working days from the release of the AYP data reports.

(5) At the end of the SDE Appeals process, the SDE shall report to the State Board of Education the statewide list of School Improvement schools.

(d) **Sanctions for public elementary and secondary schools that do not make Adequate Yearly Progress (AYP)**

(1) Title I schools that do not make Adequate Yearly Progress (AYP) for two consecutive years shall be identified as being in School Improvement status. Title I schools in the state of Oklahoma shall be subject to the sanctions defined in the No Child Left Behind Act of 2001, Public Law 107-110.

(2) Non-Title I schools that do not make AYP for two consecutive years or more shall be subject to sanctions as determined by the State Board of Education. The State Board of Education may utilize sanction options identified in the No Child Left Behind Act of 2001, Public Law 107-110, as deemed appropriate based upon relevant circumstances of the school's performance. The sanctions shall include but not be limited to the following:

(A) provide school improvement plan,
(B) provide technical assistance,
(C) offer school choice,
(D) provide supplemental services,
(E) take corrective action, or
(F) implement a restructuring plan.

(e) **Rewards for public elementary and secondary schools that make Adequate Yearly Progress (AYP)**

(1) **Academic Achievement Awards - Title I, Part A.** Title I Schools that meet AYP shall be eligible for Academic Achievement Awards. Academic Achievement Awards, under section 1117 (b) of the No Child Left Behind Act of 2001, states that each state receiving a grant under federal funds shall establish a program for making academic achievement awards to recognize schools that significantly close the achievement gap between subgroups of students or exceed their adequate yearly progress. Schools that receive Title I, Part A funds are eligible for Academic Achievement Awards.

(2) **State Academic Performance Award Program.**

(A) All public elementary and secondary schools that make Adequate Yearly Progress, shall be recognized by the state as Distinguished Schools and eligible for state funds, if available, as established by the State Academic Performance Index (API) Program (O.S. § 70-30-152).

(B) Nonmonetary recognition may include, but not be limited to, citations of congratulations from the State Superintendent of Public Instruction as the designee of the State Board of Education, the Governor or designee, the Representative and Senator representing the school district, and a flag for each school achieving Distinguished status.

[OAR Docket #05-725; filed 4-27-05]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #05-748]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 17. Full (Subject Matter) Competencies for Licensure and Certification
210:20-9-172. [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Adoption:
February 24, 2005
Effective:
Immediately upon Governor's approval
Approved by Governor:
April 15, 2005
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
This is considered to be an emergency in order to bring the state physical education competencies in alignment with the national competencies for teacher certification. Teachers need these skills for the National Board certification testing program.
ANALYSIS:
The proposed rule change would update teacher competencies for licensure for physical education to include skills in technology which will bring the state competencies in line with the National Association of Sport and Physical Education, the learned society for physical education, a division of the American Alliance of Health, Physical Education, Recreation, and Dance.
CONTACT PERSON:
Connie Holland, 405-521-3308

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 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 17. FULL (SUBJECT MATTER) COMPETENCIES FOR LICENSURE AND CERTIFICATION

210:20-9-172. Full (subject matter) competencies for licensure and certification

(a) Full (subject matter) competencies are listed in (1) through ~~(40)~~(41) by subject/content area.

(1) **Art education.** The candidate for licensure and certification:

(A) Has a sound philosophical understanding of visual art education and is able to support, justify, and implement the visual art curriculum.
(B) Has an understanding of past, current, and future trends and issues in art education as well as art education research.
(C) Has a knowledge of developmentally appropriate visual art content including aesthetics, art criticism, and art history, around a core of art production.
(D) Has a working knowledge of and has had experience in integration of the arts with other fine arts areas as well as other academic disciplines.
(E) Understands and has experience in the application of the elements and principles of art and design.
(F) Understands art history including various styles, periods, ethnic groups, and cultures from around the world.
(G) Has a knowledge of aesthetics (the field of study that relates to beauty in the arts) and art criticism (art review and commentary), along with teaching strategies appropriate for both areas that involve a variety of media and awareness of developmental levels.
(H) Understands and has experience in various methods of art production and creative development including drawing, figure drawing, color and design, painting, printmaking, sculpture, clay, applied design, and technology. Additional experience should involve metal, stone, fiber, papermaking, wood, and mixed media.
(I) Has proficiency in teaching strategies that are developmentally appropriate and inclusive of various student learning styles and is sensitive to the needs of diverse ethnic and cultural groups and those with disabilities.
(J) Develops a portfolio of his/her own artwork.
(K) Understands that contests and competitions have a valuable place in art education; however, they should not drive the development of the local curriculum.
(L) Has a knowledge of a wide variety of arts resources including community resources, materials, equipment, and information about exhibitions and/or major collections.
(M) Recognizes the important role of technology in education and that it may serve as a supportive tool in art education.
(N) Understands the art-related competencies in the Oklahoma core curriculum and knows how to incorporate them into various art classes.

(2) **Business education.** Competencies for business education are fulfilled by meeting competencies for vocational business.

(3) **Driver/safety education.** The candidate for licensure and certification:

(A) Applies, models, and teaches appropriate learning strategies for the safe operation of motor vehicles.
(B) Understands the social and emotional forces that influence the psychological makeup of young drivers and how these forces affect their driving behavior.
(C) Understands basic driving maneuvers including the universal concepts of defensive driving.
(D) Understands the physical laws of nature and the statutory laws that govern the safe operation of motor vehicles.
(E) Has an understanding of the basic mechanical systems that make up a motor vehicle and their influence on its operational limits.

(4) **Early childhood education (pre-kindergarten-third grade).** The competencies related to Early Childhood Education relate more specifically to the processes of learning and/or information processing than presentation of specific subject matter. The candidate for licensure and certification knows, understands, and uses:

(A) Factors that influence the development of young children, the sequence and interdependency of all areas, (i.e., physical, social, emotional, cognitive, and language) and uses that knowledge to meet the needs and characteristics of the group and individual children (birth to eight years of age) while respecting their unique rates of development.
(B) Positive child guidance strategies which help children learn to make responsible decisions regarding their own behavior and contributes to the development of self-control, self-motivation, and self-respect.
(C) The knowledge of how young children think, process information, and develop concepts in content areas including language, literacy, mathematics, science, health, safety, nutrition, social studies, art, music, drama, and movement.
(D) Integrative approaches (e.g., themes, topics, projects) to enable children to see and experience content areas and make meaningful connections to the child's life experience.
(E) Curriculum in regards to the children's needs and interests, as well as, developmentally appropriate skills and concepts.
(F) Developmentally appropriate strategies when planning, implementing, articulating, and evaluating (e.g., play, independent work, small group projects, group discussions, cooperative learning, open-ended questions, inquiry, and problem solving experiences.)
(G) A bias-free learning environment (indoors and outdoors) which is physically and psychologically safe for young children through the use of a balanced schedule, learning centers, and appropriate transitions and routine.
(H) Curriculum strategies, schedules, and the environment to meet the specific needs, interests, and

experiences of all children with complex characteristics (i.e., adapting for those with disabilities, developmental delays, diverse cultures, or special abilities).

(I) Collaboration strategies regularly with families and other agencies in the community to enhance and support children's learning and development.

(J) Behaviors that recognize and respect diversity, how it influences learning, and builds connections among children's families, communities, and schools.

(K) Performance assessment (i.e., observation and documentation) and formal assessment to evaluate young children's development and learning for the purpose of planning appropriate and challenging programs, environments, and interactions and adapting for individual differences.

(L) Formative and summative evaluation measures to ensure comprehensive quality of the total program for children in reciprocal partnerships, with families, and the community.

(M) The historical, social, and ethical foundations of early childhood education which enables the teacher to articulate a philosophy and rationale for appropriate principles and practices.

(N) Self evaluation of teaching techniques and outcomes and modifies curriculum, strategies, schedules and environment to maximize the learning environment and enhance psychological safety for children.

(O) Knowledge to advocate for children by articulating to family, community and others the goals and methods used in the early childhood classroom.

(P) Instructional strategies/plans based on the Oklahoma core curriculum.

(Q) Understands and applies the following competencies in reading instruction as appropriate to the abilities of the student.

(i) Knows the stages of language development and the structure of the English language and alphabetic writing system including phonology, morphology, and orthography and their relationships to spelling and meaning.

(ii) Understands that primary language (oral) directly impacts the secondary languages (reading, writing, spelling). Knows and applies knowledge of implicit and explicit instruction in developing oral language. Knows the relationship of oral language to literacy.

(iii) Knows the developmental process of reading in order to assess, interpret, describe, develop appropriate instruction, monitor, reteach and reassess student's reading performance for concepts about print, phonological and phonemic awareness, phonics, spelling, word recognition, vocabulary, comprehension, fluency, and writing.

(iv) Identifies and applies all developmental levels of phonemic awareness to provide appropriate instruction in understanding words are made up of phonemes and that phonemes can be rearranged and manipulated to make different words that compose oral speech.

(v) Knows and provides appropriate systematic explicit and implicit phonological instruction for the application of spelling-sound correspondences for word analysis and for structural analysis for word recognition and word meaning development.

(vi) Knows and applies the relationships between spelling patterns and sounds of speech; knows how to support the student at each stage of spelling development; knows how to focus direct and indirect instruction to guide the student toward spelling proficiency.

(vii) Knows and applies knowledge of appropriate explicit and implicit instruction for vocabulary development (e.g., singular and plural).

(viii) Knows and applies strategies that promote comprehension and strategies to support children's understanding for the various elements of the different genres of text.

(ix) Knows and applies strategies and instructional approaches to support response to text and promote comprehension for literal, inferential, and critical/evaluative level (e.g., guided reading, literature and research circles).

(x) Knows and applies knowledge of instructional techniques to assist students with self-monitoring and self-corrections~~,~~ (i.e., semantics, syntax, and graphophonics).

(xi) Knows and applies the instructional strategies which contribute to the development of fluent reading.

(xii) Knows how to promote children's interest and engagement in reading and writing.

(R) Understands and applies the following competencies in mathematics instruction as appropriate to the abilities of the student.

(i) Builds on children's natural interest in mathematics and uses it to make sense of their physical and social worlds.

(ii) Establishes mathematics curriculum based on current knowledge of young children's cognitive, linguistic, physical and social-emotional development that builds on children's varying experiences.

(iii) Uses teaching practices that enhance children's problem-solving and reasoning processes which includes representing, communicating, and connecting mathematical ideas.

(iv) Understands that the curriculum should be coherent and compatible with known relationships and sequences of important mathematical ideas and that provides for children's deep and lasting interaction with key mathematical ideas.

(v) Introduces mathematical concepts, methods, and language through a variety of appropriate

experiences and teaching strategies, including integrating mathematics with other activities and allowing ample time, materials and teacher support for children to explore and manipulate mathematical ideas.

(vi) Enhances children's mathematical knowledge, skills and strategies by providing an ongoing process of collecting information from multiple sources to determine a student's strengths and weaknesses in order to plan appropriate educational services.

(S) Understands and applies the following competencies in science instruction as appropriate to the abilities of the student.

(i) Plans an inquiry-based science program that develops a curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students in a framework of yearlong and short-term goals for students.

(ii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iii) Guides and facilities learning through focused interaction with students, recognizes and responds to student diversity, and encourages and models the skills of inquiry in order for all students to participate in science learning.

(iv) Uses ongoing multiple methods and systematically gathers data about students understanding and abilities.

(v) Designs and manages learning environments that provide students with the time, space and resources needed for developing science skills.

(vi) Uses a variety of instructional strategies to implement an integrated/interdisciplinary curriculum and understands the interaction between the sciences and the process skills.

(T) Understands and applies the following competencies in social studies instruction as appropriate to the abilities of the student.

(i) Designs and manages learning environments that provide opportunities for students to exhibit traits of good citizenship in a variety of settings and situations.

(ii) Selects teaching and assessment strategies that support the development of student understanding of their community and culture.

(U) Understands and applies the following competencies in the use of technology as appropriate to the abilities of the student.

(i) Bases the use of technology on the knowledge of how young children think, process information and develop concepts in content areas.

(ii) Enhances children's cognitive and social abilities through the appropriate use of technology.

(iii) Integrates technology into the learning environment and uses it as one of many options to support children's learning.

(iv) Promotes equitable access to technology for all children and their families.

(v) Advocates in collaboration with parents for more appropriate technology applications for all children.

(5) **Elementary education.** The competencies developed in specific subject areas such as mathematics, art, science, etc., have been developed on a prekindergarten through 12th grade continuum. Because of this, it is unnecessary for the elementary education competencies to address anything more than the processes through which the subject matter competencies will be presented in the classroom. The candidate for licensure and certification:

(A) Understands his/her role and the variety of approaches to the organization of elementary schools.

(B) Understands the essential nature and importance of interaction and communication with students, parents, community members and colleagues.

(C) Models the role of the lifelong learner.

(D) Understands the role of the teaching profession in curriculum change and school improvement.

(E) Understands the link between child development, curriculum, and instruction.

(F) Understands and uses a variety of strategies to:

(i) select methods of assessment appropriate to each of the subject matter areas and to the age, development, and characteristics of students,

(ii) interpret and communicate assessment results accurately and ethically, and

(iii) integrate information gained from assessments into instructional plans.

(G) Has a knowledge of current research findings about teaching and learning.

(H) Analyzes his/her teaching practices through a variety of techniques.

(I) Understands appropriate classroom management systems and discipline practices.

(J) Understands the selection and use of materials, resources, and technology appropriate to individual differences.

(K) Creates an environment that facilitates learning experiences which make subject matter meaningful to students.

(L) Understands the subject matter areas common to the elementary curriculum and the integration of those subject matter areas.

(M) Facilitates learning groups as appropriate to the needs and/or interests of students and the goals of the lesson.

(N) Understands and applies the following competencies in reading instruction.

(i) Knows the stages of language development and the structure of the English language and alphabetic writing system including phonology,

morphology, and orthography and their relationships to spelling and meaning.

(ii) Understands that primary language (oral) directly impacts the secondary languages (reading, writing, spelling). Knows and applies knowledge of implicit and explicit instruction in developing oral language. Knows the relationship of oral language to literacy.

(iii) Knows the developmental process of reading in order to assess, interpret, describe, develop appropriate instruction, monitor, reteach and reassess student's reading performance for concepts about print, phonological and phonemic awareness, phonics, spelling, word recognition, vocabulary, comprehension, fluency, and writing.

(iv) Identifies and applies all developmental levels of phonemic awareness to provide appropriate instruction in understanding words are made up of phonemes and that phonemes can be rearranged and manipulated to make different words that compose oral speech.

(v) Knows and provides appropriate systematic explicit and implicit phonological instruction for the application of spelling-sound correspondences for word analysis and for structural analysis for word recognition and word meaning development.

(vi) Knows and applies the relationships between spelling patterns and sounds of speech; knows how to support the student at each stage of spelling development; knows how to focus direct and indirect instruction to guide the student toward spelling proficiency.

(vii) Knows and applies knowledge of appropriate explicit and implicit instruction for vocabulary development, e.g., prefixes, suffixes and roots.

(viii) Knows and applies strategies that promote comprehension and strategies to support children's understanding for the various elements of the different genres of text.

(ix) Knows and applies strategies and instructional approaches to support response to text and promote comprehension for literal, inferential, and critical/evaluative level, e.g., guided reading, literature and research circles.

(x) Knows and applies knowledge of instructional techniques to assist students with self-monitoring and self-corrections, i.e., semantics, syntax, and graphophonics.

(xi) Knows and applies the instructional strategies which contribute to the development of fluent reading.

(xii) Knows how to promote children's interest and engagement in reading and writing.

(O) Understands interdisciplinary teaching and collaboration.

(P) Understands that all students can develop proficiencies in the Oklahoma core curriculum.

(6) **English.** The candidate for licensure and certification:

(A) Maintains current knowledge of content-area concepts of written and oral communication, literature, and language systems (phonetic, semantic, syntactic, pragmatic). For purposes herein, language systems and what they mean or include are:

(i) **"Phonetic"** means the letter/sound system of a particular language.

(ii) **"Pragmatic"** means the use of particular language and its conventions that convey meaning in a cultural context.

(iii) **"Semantic"** means the meaning system of a given language.

(iv) **"Syntactic"** means the structure, order, and organization of a given language.

(B) Applies comprehension, analysis, interpretation, synthesis and evaluation of auditory, written, and visual messages. For purposes herein, these terms have the following meaning and include:

(i) **"Auditory messages"** means spoken language, intonation.

(ii) **"Visual messages"** means visual graphics such as illustrations, pictures, photographs, symbols, and signs, body language, facial expressions.

(iii) **"Written messages"** means connected discourse, text.

(C) Applies appropriate learning strategies for reading, writing, studying, and researching.

(D) Communicates effectively in speaking and writing, using appropriate language conventions. For purposes herein, **"language conventions"** means grammar, figurative language, mechanics, specialized vocabulary, technical terms.

(E) Understands the influences of social and historical contexts and culture on language and literature and adapts instruction accordingly.

(F) Uses the understanding of language acquisition and language learning processes to develop student proficiencies and to modify instruction for second-language learners.

(G) Establishes a reflective and creative learning environment.

(H) Uses a variety of assessment strategies to evaluate student proficiencies in the language arts and to modify instruction appropriately.

(I) Uses technology to accomplish professional goals and to develop student's literacy proficiencies.

(J) Understands and teaches strategies appropriate to a variety of forms (genres), text organizations, and structures, including functional print and informational print. For purposes herein:

(i) **"Functional print"** means environmental print messages (i.e., signs, logos, labels, directions);

(ii) **"Genre"** means a particular type of literature (i.e., short story, novel, poem, essay, drama)

(iii) **"Informational print"** includes reference materials, telephone books, almanacs, dictionaries.

(K) Understands the literacy process (i.e., reading process and writing process), and provides effective instruction in literacy skills and strategies.

(L) Understands, teaches, and implements Oklahoma's core curriculum.

(7) **Family and consumer sciences.** Competencies for family and consumer sciences are fulfilled by meeting competencies for vocational family and consumer sciences.

(8) **Foreign languages.** The candidate for licensure and certification will possess competencies as specified in (A) through (G).

(A) **Listening (K-12).** The candidate for licensure and certification:

(i) Understands main ideas and supporting details of oral presentations and conversations (e.g., prepared speeches, news broadcasts, interviews, short lectures).

(ii) Understands spontaneous speech on a variety of basic topics.

(iii) Comprehends sustained conversation or narrative of general topics (secondary only).

(B) **Speaking (K-12).** The candidate for licensure and certification:

(i) Narrates and describes events, objects, and activities with supporting details.

(ii) Participates in spontaneous, face-to-face conversation involving more complicated skills and social situations, such as elaborating, apologizing, debating.

(iii) Initiates, sustains, and closes a general conversation.

(iv) Displays some ability to support opinions, explain in detail, and make assumptions (secondary only).

(v) Uses varied strategies, such as paraphrasing or restating, to facilitate communication in the language being studied (secondary only).

(C) **Reading (K-12).** The candidate for licensure and certification:

(i) Reads authentic (from the culture of the language studied) materials, such as selected short stories, poetry, and other literary works, articles, personal correspondence, and simple technical material written for the general reader.

(ii) Comprehends facts in authentic (from the culture of the language studied) texts and materials and makes appropriate inferences.

(iii) Comprehends authentic (from the culture of the language studied) communications via various media and technology.

(D) **Writing (K-12).** The candidate for licensure and certification:

(i) Communicates by writing simple facts and ideas.

(ii) Expresses narratives and descriptions of a factual nature.

(iii) Writes professional and social correspondence (secondary only).

(E) **Culture (K-12).** The candidate for licensure and certification:

(i) Is knowledgeable about the products of the culture of the language being taught.

(ii) Is knowledgeable about practices of the culture of the language being taught.

(iii) Is able to compare and contrast local culture and cultures of the language being taught.

(F) **Second language acquisition (K-12).** The candidate for licensure and certification:

(i) Is knowledgeable about first language development and its relation to second language learning.

(ii) Is knowledgeable about varied teaching approaches, methods, and strategies.

(iii) Is knowledgeable about varied second language assessment strategies and techniques that are developmentally appropriate.

(G) **The Oklahoma core curriculum** (K-12). The candidate for licensure and certification:

(i) Understands Oklahoma's core curriculum for languages, and

(ii) Implements the skills and knowledge appropriate to the level(s) taught.

(9) **Journalism.** The candidate for licensure and certification:

(A) Maintains current knowledge of concepts, theories, and practical application of such in the field of journalism, including those associated with print media, news gathering, writing, research, graphic design, photography, technology, law, and ethics.

(B) Applies comprehension, analysis, interpretation, and evaluation of auditory, written, and visual communication. Projects can be created based on this knowledge, i.e., newspapers, yearbooks, magazines, or broadcasts.

(C) Applies appropriate learning strategies for research, writing, organization, editing, and presentation of written and visual messages to different audiences.

(D) Communicates effectively in oral presentation, written communication, and visual design.

(E) Understands the influence of social and historical context of culture on journalism and adapts instruction accordingly.

(F) Understands the impact and importance of cultural diversity on the communication process.

(G) Establishes a reflective and creative learning environment.

(H) Uses a variety of assessment strategies and teaching methods to encourage creativity, to inspire critical thinking to develop problem-solving techniques, and to establish and maintain excellence in all journalism pursuits.

(I) Uses technology to accomplish professional goals and to develop students' journalistic proficiencies in all aspects of the subject, including, but not limited to, desktop publishing, photojournalism, written communication, graphic design, and research.

(J) Understands and can teach strategies appropriate to a variety of journalistic areas, including print media, graphic arts, printing technology, broadcast media, electronic media, advertising, business management practices, public relations, and professional writing.

(K) Is prepared to teach students in the following areas:

(i) desktop publishing;

(ii) writing for print and electronic media;

(iii) editing;

(iv) photography and videography;

(v) graphic design and typography;

(vi) headline, preview, promotion, and caption writing.

(L) Is prepared to teach

(i) research skills;

(ii) interviewing;

(iii) ethics, law, and responsibilities of the press;

(iv) journalism history;

(v) television, video, radio and multimedia production;

(vi) staff management, organization and leadership techniques;

(vii) business management and accounting procedures.

(M) Is knowledgeable of professional resources, including state, regional, and national scholastic press associations, workshops, conferences, contests, and publications.

(N) Understands the importance of effective verbal and visual communication skills.

(O) Understands the role of co-curricular and extracurricular activities in the development of student interests as an extension of classroom instruction.

(P) Understands, teaches, and implements Oklahoma's core curriculum.

(10) **Library-media specialist.** The candidate for licensure and certification:

(A) Defines a program of information literacy and integrates it into the curriculum

(B) Defines a school library media program emphasizing information problem-solving skills and integrates it into the curriculum.

(C) Motivates and guides students and faculty in recognizing literature as an essential base of cultural and practical knowledge and in reading for pleasure as well as for information.

(D) Communicates effectively with students, faculty, staff, administrators, parents, other colleagues, and the general public by the ability to:

(i) exhibit communication skills necessary for collaborative planning with teachers.

(ii) develop and implement an effective public relations program to communicate library media program goals, needs, and accomplishments.

(E) Applies basic principles of evaluating and selecting resources and equipment to support the educational goals of the school by the ability to:

(i) develop selection policies which reflect curricular and instructional objectives, and informational and recreational needs of students and teachers.

(ii) develop criteria for evaluating and selecting specific print and non-print materials and equipment.

(iii) develop a collection of bibliographic aids, tools, and other sources to obtain current reviews and information about materials and equipment.

(iv) develop and implement procedures for preview, evaluation, selection, and acquisition of materials and equipment consistent with the district policy.

(v) reevaluate and maintain materials and equipment.

(F) Uses resources to support the personal, developmental, and curricular needs of students, and the instructional development needs of the faculty by the ability to:

(i) use a variety of ways to access information, including the use of new technologies.

(ii) provide specific information and resources in response to reference requests and recommend resources which support the curriculum.

(iii) conduct programs that include guidance in reading, listening, and viewing experiences.

(iv) assist students and staff in identifying, obtaining, using and/or producing media in appropriate formats for specific learning objectives.

(v) supervise students and staff in media production and equipment operation.

(vi) advocate resource-based learning through work with other faculty to identify appropriate instructional strategies and creative uses of resources.

(G) Recognizes the value of new technologies for information and instruction and assists faculty and students in their use by the ability to:

(i) recognize the importance of technological advancement to the education process.

(ii) demonstrate an understanding of the basic concepts, terminology, and applications of emerging technology.

(iii) recognize curricular implications that result from emerging technology and educational trends.

(iv) provide leadership in incorporating innovations into education.

(v) identify sources of information related to technological advancements.

(vi) provide technical advice and services for educational access to technology.

(H) Implements policies and procedures for effective and efficient acquisition, cataloging, processing, circulating, and maintaining equipment and resources to ensure access by the ability to:

(i) classify and catalog all print and nonprint media according to professionally accepted systems.

(ii) organize and maintain a current catalog and shelf list of all media.

(iii) implement procedures for initial processing, circulation, maintenance, service, and inventory of equipment and materials.

(I) Develops, implements, and evaluates school library media programs, including management of personnel, resources, and facilities by the ability to:

(i) assess the informational and instructional needs of students and faculty.

(ii) establish short- and long-range goals based on identified needs, the goals and objectives of the school district, state and national guidelines, and research findings.

(iii) prepare, justify, and administer a library media program budget.

(iv) prepare plans for new or renovated library media facilities.

(v) develop policies that assure optimum use of materials, equipment, facilities, and staff to support the curriculum.

(vi) train, supervise, and evaluate support staff, volunteers, and student helpers.

(vii) apply federal and state laws pertaining to media including those regarding copyright, privacy, and access to materials.

(viii) prepare statistical records and written reports.

(ix) assess and implement the use of new technologies for library media center management, educational applications, and information retrieval.

(x) evaluate the library media program based on established goals and standards.

(xi) apply effective management principles.

(xii) advocate, initiate, and implement agreements for resource sharing.

(J) Serves as a learning facilitator within schools and as a leader of faculty, administration, and students in the development of effective strategies for teaching and learning with the ability to:

(i) teach traditional and electronic skills in the retrieval, evaluation, and utilization of information to enable students to become independent learners.

(ii) plan and implement professional development programs.

(K) Demonstrates a commitment to professionalism by the ability to:

(i) exhibit comprehension of the roles, interrelationships, and interdependency of all types of libraries and information agencies.

(ii) exhibit an understanding of the role of the school library media program as a central element in the intellectual life of the school.

(iii) demonstrate a commitment to promoting intellectual freedom.

(iv) demonstrate professional integrity through ethical behavior.

(v) apply appropriate research findings and conduct action research to improve the library media program.

(vi) develop selection criteria that reflect relevant theories of learning and instruction.

(vii) apply basic principles of instructional design in producing resources for specified learning goals or objectives.

(11) **Elementary mathematics.**

(A) **Overview.** The goal of teacher preparation programs in mathematics, in partnership with common education, is to prepare future teachers for the twenty-first century. Teacher preparation programs must recognize the changes in society to prepare adaptive teachers who are capable of providing equitable schooling for all students of the twenty-first century. Teacher preparation programs must recognize that learning to teach effectively does not consist solely of acquiring content skills. Theory alone cannot create an effective teacher. Effective teaching also must include the processes or pedagogy of teaching that incorporate actual experiences with students and other teacher candidates within a body or bodies of knowledge. Teacher preparation programs are challenged with providing a rigorous body of content which is not isolated from the strategies of teaching and the application of that content.

(B) **Commitment.** The candidate for licensure and certification recognizes the individuality and worth of each student, believes that all students can learn and apply mathematics, and demonstrates these beliefs in practice.

(C) **Knowledge of students, mathematics and teaching.** The candidate for licensure and certification:

(i) Uses knowledge of child development and knowledge about the effects of this development on the learning of mathematics to guide curricular and instructional decisions. This will include primary, intermediate, and middle level philosophy, structure, organization, and child development.

(ii) Understands students' environment and cultural background, individual learning differences, student attitudes and aspirations, and community expectations and values on the learning of their students.

(iii) Has a broad and deep knowledge of the concepts, principles, techniques, and reasoning methods of mathematics that is used to set curricular goals and shape teaching.

(iv) Understands significant connections among mathematical ideas and the applications of these ideas to problem-solving in mathematics, in other disciplines, and in the world outside of school.

(v) Has experiences with practical applications of mathematical ideas and is able to incorporate these in their curricular and instructional decisions.

(vi) Is proficient in, at least, the mathematics content needed to teach the mathematics skills described in Oklahoma's core curriculum from multiple perspectives. This includes, but is not limited to, a concrete and abstract understanding of number systems and number sense, geometry, measurement, statistics and probability, functions, and algebra necessary to effectively teach the mathematics content skills addressed in the first through eighth grade as well as the mathematics process skills of problem-solving, reasoning, communication, and connections.

(vii) Is proficient in the use of a variety of instructional strategies to include, but not limited to, cooperative learning, use of concrete materials, use of technology (i.e., calculators and computers), and writing strategies to stimulate and facilitate student learning.

(viii) Is proficient in the design of instructional units which incorporate the mathematical processes of problem-solving, reasoning, communication, and connections into the instruction of content skills.

(ix) Has knowledge of how to teach and use this knowledge to make curriculum decisions, design instructional strategies and assessment plans, and choose materials and resources for mathematics instruction.

(x) Stimulates and facilitates student learning by using a wide range of formats, strategies, technologies, and procedures, and assuming a variety of roles to guide students' learning of mathematics.

(xi) Helps students learn mathematics by creating a safe and positive environment in which they take responsibility for learning.

(xii) Develops students' abilities to reason and think mathematically, to investigate and explore patterns, to discover structures and relationships, to formulate and solve problems, and to justify and communicate conclusions.

(xiii) Employs a range of formal and informal assessment methods to evaluate student learning in light of well-defined goals. Results should be used to guide the teaching process and provide opportunities for students to reflect on the strengths and weaknesses of individual performance.

(D) **Reflection and growth.** The candidate for licensure and certification:

(i) Regularly reflects on what one teaches and how one teaches.

(ii) Keeps informed of changes in mathematics and in the teaching of mathematics, continually seeking to improve his/her knowledge and practice.

(iii) Supports the involvement of families in their children's education, helps the community understand the role of mathematics and mathematics instruction in today's world, and, to the extent possible, involves the community in support of instruction.

(iv) Collaborates with peers and other education professionals to strengthen their school's programs, advance knowledge, and contribute to improving practice within the field.

(12) **Intermediate mathematics.**

(A) **Overview.** The goal of teacher preparation programs in mathematics, in partnership with common education, is to prepare future teachers for the twenty-first century. Teacher preparation programs must recognize the changes in society to prepare adaptive teachers who are capable of providing equitable schooling for all students of the twenty-first century. Teacher preparation programs must recognize that learning to teach effectively does not consist solely of acquiring content skills. Theory alone cannot create an effective teacher. Effective teaching also must include the processes or pedagogy of teaching that incorporate actual experiences with students and other teacher candidates within a body or bodies of knowledge. Teacher preparation programs are challenged with providing a rigorous body of content which is not isolated from the strategies of teaching and the application of that content.

(B) **Commitment.** The candidate for licensure and certification recognizes the individuality and worth of each student, believes that all students can learn and apply mathematics, and incorporates these beliefs into practice.

(C) **Knowledge of students, mathematics and teaching.** The candidate for licensure and certification:

(i) Has an understanding of middle level philosophy, structure, organization, and child development as well as an understanding of secondary level structure and child development.

(ii) Uses knowledge of child development and knowledge about the effects of this development on the learning of mathematics to guide curricular and instructional decisions.

(iii) Understands students' environment and cultural background, individual learning styles,

student attitudes and aspirations, and community expectations and values on the learning of students.

(iv) Has a broad and deep knowledge of the concepts, principles, techniques, and reasoning methods of mathematics that is used to set curricular goals and shape teaching.

(v) Understands significant connections among mathematical ideas and the applications of these ideas to problem-solving in mathematics, in other disciplines, and in the world outside of school.

(vi) Has experiences with practical applications of mathematical ideas and is able to incorporate these in curricular and instructional decisions.

(vii) Is proficient in, at least, the mathematics content needed to teach the mathematics skills described in Oklahoma's core curriculum from multiple perspectives. This includes, but is not limited to, a concrete and abstract understanding of number systems and number theory, geometry and measurement, statistics and probability, functions, algebra, discrete mathematics, and calculus necessary to effectively teach the mathematics skills addressed in the sixth through eighth grade as well as the core and extended core skills in the algebra, geometry, functions, statistics, and probability sections of grades 9-12 in Oklahoma's core curriculum. This would also include the process skills and core skills addressed in the trigonometry and calculus sections of grades 9-12 in the Oklahoma core curriculum.

(viii) Is proficient in the use of a variety of instructional strategies to include, but is not limited to, cooperative learning, use of concrete materials, use of technology (i.e., calculators and computers), and writing strategies to stimulate and facilitate student learning.

(ix) Is proficient in the design of instructional units which incorporate the mathematical processes of problem-solving, reasoning, communication, and connections into the instruction of content skills.

(x) Has knowledge of how to teach and uses this knowledge in making curriculum decisions, designing instructional strategies and assessment plans, and choosing materials and resources for mathematics instruction.

(xi) Helps students learn mathematics by creating a safe and positive environment in which they take responsibility for learning.

(xii) Uses content knowledge and pedagogy to develop students' abilities to reason and think mathematically, to investigate and explore patterns, to discover structures and relationships, to formulate and solve problems, and to justify and communicate conclusions.

(xiii) Employs a range of formal and informal assessment methods to evaluate student learning in light of well-defined goals. Results should be used to guide the teaching process and provide opportunities for students to reflect on the strengths and weaknesses of individual performance.

(D) **Reflection and growth.** The candidate for licensure and certification:

(i) Keeps informed of changes in mathematics and in the teaching of mathematics, continually seeking to improve knowledge and practice. He/she regularly reflects on what is taught and how it is taught.

(ii) Supports the involvement of families in their children's education, helps the community understand the role of mathematics and mathematics instruction in today's world, and, to the extent possible, involves the community in support of instruction.

(iii) Collaborates with peers and other education professionals to advance knowledge and contribute to improving practice within the field.

(13) **Advanced/secondary mathematics.**

(A) **Overview.** The goal of teacher preparation programs in mathematics, in partnership with common education, is to prepare future teachers for the twenty-first century. Teacher preparation programs must recognize the changes in society to prepare adaptive teachers who are capable of providing equitable schooling for all students of the twenty-first century. Teacher preparation programs must recognize that learning to teach effectively does not consist solely of acquiring content skills. Theory alone cannot create an effective teacher. Effective teaching also must include the processes or pedagogy of teaching that incorporate actual experiences with students and other teacher candidates within a body or bodies of knowledge. Teacher preparation programs are challenged with providing a rigorous body of content which is not isolated from the strategies of teaching and the application of that content.

(B) **Commitment.** The candidate for licensure and certification recognizes the individuality and worth of each student, believes that all students can learn and apply mathematics, and incorporates these beliefs into practice.

(C) **Knowledge of students, mathematics and teaching.** The candidate for licensure and certification:

(i) Has an understanding of the middle level philosophy, structure, organization, and child development as well as an understanding of the secondary level structure and child development.

(ii) Uses knowledge of child development and knowledge about the effects of this development on the learning of mathematics to guide curricular and instructional decisions.

(iii) Understands students' environment and cultural background, individual learning styles, student attitudes and aspirations, and community expectations and values on the learning of students.

(iv) Has a broad and deep knowledge of the concepts, principles, techniques, and reasoning methods of mathematics that is used to set curricular goals and shape teaching.

(v) Understands significant connections among mathematical ideas and the applications of these ideas to problem solving in mathematics, in other disciplines, and in the world outside of school.

(vi) Has experiences with practical applications of mathematical ideas and is able to incorporate these in curricular and instructional decisions.

(vii) Is proficient in, at least, the mathematics content needed to teach the mathematics skills described in Oklahoma's core curriculum from multiple perspectives. This includes, but is not limited to, a concrete and abstract understanding of number systems and number theory, geometry and measurement, statistics and probability, functions, algebra, discrete mathematics, and calculus necessary to effectively teach the mathematics skills addressed in the sixth through twelfth grade in the Oklahoma core curriculum. (The depth and breadth of knowledge should be much greater than for the Intermediate Mathematics certification.)

(viii) Is proficient in the use of a variety of instructional strategies to include, but is not limited to, cooperative learning, use of concrete materials, use of technology (i.e., calculators and computers), and writing strategies to stimulate and facilitate student learning.

(ix) Is proficient in the design of instructional units which incorporate the mathematical processes of problem-solving, reasoning, communication, and connections into the instruction of content skills.

(x) Has knowledge of how to teach and uses this knowledge in making curriculum decisions, designing instructional strategies and assessment plans, and choosing materials and resources for mathematics instruction.

(xi) Helps students learn mathematics by creating a safe and positive environment in which they take responsibility for learning.

(xii) Uses content knowledge and pedagogy to develop students' abilities to reason and think mathematically, to investigate and explore patterns, to discover structures and relationships, to formulate and solve problems, and to justify and communicate conclusions.

(xiii) Employs a range of formal and informal assessment methods to evaluate student learning in light of well-defined goals. Results should be used to guide the teaching process and provide opportunities for students to reflect on the strengths and weaknesses of individual performance.

(D) **Reflection and growth.** The candidate for licensure and certification:

(i) Keeps informed of changes in mathematics and in the teaching of mathematics, continually seeking to improve knowledge and practice. He/she regularly reflects on what is taught and how it is taught.

(ii) Supports the involvement of families in their children's education, helps the community understand the role of mathematics and mathematics instruction in today's world, and, to the extent possible, involves the community in support of instruction.

(iii) Collaborates with peers and other education professionals to advance knowledge and contribute to improving practice within the field.

(14) **Middle level personnel.** The competencies developed here focus on middle level philosophy, structure, organization, and student development. Subject matter competencies can be pulled from the K-12 competencies developed by the subject matter committees. The candidate for licensure and certification:

(A) Understands the history, philosophy, principles, structure, and organization of middle level education as it relates to early adolescence.

(B) Uses methods and materials for interdisciplinary instruction at the middle school level.

(C) Demonstrates an understanding of child-centered versus content-centered methodologies to meet the individual needs of middle level students.

(D) Has knowledge and skills pertaining to classroom management, organization, and student discipline at the middle school level.

(E) Understands the unique developmental characteristics and needs of the early adolescent, focusing on cognitive, physical, and social development.

(F) Establishes an environment using active participation to teach problem-solving and communication skills (reading, listening, writing, and speaking) as an integral part of all instruction.

(G) Understands curriculum-based teacher advisory programs, which foster character, responsibility, respect for others, and active community involvement.

(H) Understands the need to work collaboratively with other teachers, staff members, parents, resource persons, and community groups to enhance and support the education of young adolescents.

(I) Uses a variety of instructional strategies that address different learning styles to meet the needs of early adolescents.

(J) Models the role of the lifelong learner.

(K) Insures that all students develop proficiencies in the Oklahoma core curriculum.

(15) **Instrumental/general music.** The candidate for licensure and certification:

(A) Understands the basic philosophy of music education and is able to justify music within the school curriculum.

(B) Understands how music and fine arts experiences enhance student life experience and can promote music and the other arts in the community as well as within the school (including group motivational strategies and group management methods).

(C) Participates in ongoing professional development which includes involvement with professional associations and current experiences in performing endeavors.

(D) Has knowledge of effective methodologies and practices for encouraging self-analysis and musical independence.

(E) Has mastery of a major instrument, including appropriate techniques of breathing, embouchure (mouth position), posture, and hand position.

(F) Has a broad understanding of music history, including various styles and musical contributions of different cultural and ethnic groups.

(G) Has the ability to play an instrument(s) and teach a beginning instrumental music class, using current methods and quality music literature (collection of written music) for band, small ensemble, and solo.

(H) Is able to recognize and evaluate the sequential development of students, including those with disabilities.

(I) Has knowledge of where to locate printed musical resources and professional consultants.

(J) Has a working knowledge of how music integrates with all other academic disciplines, including other fine arts areas.

(K) Has the skill to collaborate and coordinate experiences with teachers of other academic disciplines, including other fine arts areas.

(L) Has competency in conducting techniques.

(M) Is able to teach basic fundamentals of embouchure (mouth position), hand position, technique and other related skills, of all the standard band and orchestra instruments at a basic Grade 6-8 level, including making a characteristic sound.

(N) Is able to sing a diatonic melody at sight, using a consistent sight-singing method, and the skill to teach that method appropriately at each grade level. **"Diatonic"** means relating to a musical scale having eight tones to the octave and using a fixed pattern of intervals without chromatic deviation.

(O) Is able to count rhythms using a consistent rhythm reading system and demonstrates the skill to teach that method appropriately at each grade level.

(P) Has knowledge of music education approaches such as Carl Orff, Zoltar Kodaly and Jaques-Dalcroze and is able to prepare and teach a lesson according to each of these approaches.

(Q) Has basic proficiency in piano, including a knowledge of keyboard harmony and is able to play functional progressions and simple accompaniments.

(R) Has the ability to use technology in the music classroom, such as basic knowledge of MIDI (musical instrument digital interface), sequencing and notational software programs, sound system set-up, and to make successful recordings of music ensembles.

(S) Understands basic laws of copyright pertaining to the correct use of copyrighted printed music and related responsibilities.

(T) Understands the competencies in General Music in Oklahoma's core curriculum and exhibits the skill to incorporate them into various instrumental music classes.

(16) **Vocal/general music.** The candidate for licensure and certification:

(A) Understands the basic philosophy of music education and is able to justify music within the school curriculum.

(B) Understands how music and fine arts experiences enhance student life experience and can promote music and the other arts in the community as well as within the school (including group motivational strategies and group management methods).

(C) Has knowledge of effective methodologies and practices for encouraging self-analysis and musical independence.

(D) Understands proper breathing techniques and tone production techniques.

(E) Has a knowledge of quality literature (collection of written music), both choral and solo, as well as folk songs appropriate for children.

(F) Understands the changing voice, both male and female.

(G) Has knowledge of where to locate professional consultants and printed music resources, such as music stores, music publisher catalogues,and textbook companies.

(H) Has a working knowledge of how to coordinate vocal music with all academic disciplines including other fine arts areas.

(I) Has proficiency in piano, including knowledge of scales, chords and the ability to warm up a choir and play simple accompaniments.

(J) Participates in ongoing professional development which includes involvement with professional associations.

(K) Has the ability to recognize and evaluate sequential musical development for all students, including those with disabilities.

(L) Has competency in conducting, including the ability to show musical nuance (subtle distinction or variation).

(M) Is able to prepare a series of lesson plans appropriate to each teaching level K-12.

(N) Has the ability to sing a diatonic melody at sight, using a consistent sight singing method and the

skill to teach that method appropriately at each grade level. **"Diatonic"** means relating to a musical scale having eight tones to the octave and using a fixed pattern of intervals without chromatic deviation.

(O) Has the ability to count rhythms using a consistent rhythmic reading system and the skills to teach that method appropriately at each grade level.

(P) Has knowledge of the music education approaches such as Carl Orff, Zoltar Kodaly and Jaques-Dalcroze and is able to prepare and teach a lesson according to each of these approaches.

(Q) Has broad knowledge and understanding of music history including various styles, periods and cultures.

(R) Has broad knowledge and understanding of a variety of music and musical practices representative of different cultural and ethnic groups.

(S) Has the ability to use technology in the music classroom, such as basic knowledge of MIDI (musical instrument digital interface), sequencing and notational software programs, sound system set-up, and to make successful recordings of music ensembles.

(T) Understands basic laws of copyright pertaining to the correct use of copyrighted printed music and related responsibilities.

(U) Understands the competencies in General Music in Oklahoma's core curriculum and exhibits the skill to incorporate them into various vocal music classes.

(17) **Physical education/health/safety.** Competencies specified in both (A) Physical Education/Safety and (B) Health/Safety are required for licensure and certification:

(A) **Physical education/safety.** The candidate for licensure and certification:

(i) Understands the Oklahoma core curriculum and is able to develop instructional strategies/plans based on the Physical Education Section of the Oklahoma core curriculum.

(ii) Knows the developmental levels of growth and coordination of children (Grades K-12) and provides appropriate learning opportunities that support the physical and intellectual development of all students.

(iii) Understands and uses a variety of both psychomotor and cognitive assessment strategies to evaluate and modify the teaching/learning process.

(iv) Understands and utilizes physical education activities for curriculum integration.

(v) Applies movement concepts and principles to the learning and development of rhythm and motor skills for the following:

(I) locomotor movement

(II) nonlocomotor movement

(III) manipulative skills

(vi) Promotes participation and involvement in age-appropriate physical activities/sports suitable for lifelong participation in the following areas:

(I) lifetime activities/sports (i.e., skiing, camping, hiking, clogging)

(II) individual activities/sports (i.e., golf, tennis, self-defense, spelunking)

(III) nontraditional team activities/sports (i.e., korfball, lacrosse, square dancing)

(IV) traditional team activities/sports (i.e., basketball, volleyball, softball)

(vii) Understands adaptive learning activities for students with special needs.

(viii) Knows and can demonstrate appropriate fitness, wellness, and personal management components including:

(I) Fitness. Fitness includes: flexibility; muscular strength; cardiovascular fitness endurance; contraindicated exercises (traditional exercises which have been proven, through research, to be damaging to the body); nutrition.

(II) Wellness. Wellness encompasses: body composition; stress management; safety and accident prevention; designing and assessing personal fitness program; weight control; consumer education.

(III) Personal management skills: cooperation; sportsmanship; self-discipline; goal setting; following rules.

(ix) Uses information technology to enhance learning and to enhance personal productivity:

(I) Demonstrates knowledge of current technologies and their application in Physical Education.

(II) Designs, develops, and implements student learning activities that integrate information technology.

(III) Uses technologies to communicate, network, locate resources, and enhance continuing professional development.

(B) **Health/safety.** The candidate for licensure and certification:

(i) Communicates the concepts, purposes, and importance of health education; as evidenced by the following indicators:

(I) Describes the discipline of health education within the school setting.

(II) Describes the interdependence of health education and the other components of a coordinated school health program.

(III) Delivers accurate and up-to-date information about the most common comprehensive school health education components; including but not limited to: community and environmental health; consumer health; disease prevention and control; healthy communication; human growth and development; mental and emotional health; nutrition; personal health; safety and injury prevention; substance abuse.

(IV) Provides a rationale for health education, grades 1-12.

(V) Understands the variables that shape decisions about health behaviors.

(VI) Defines the role of the health education teacher within a coordinated school health program.

(VII) Explains the importance of health education.

(VIII) Identifies the kinds of school and community support necessary to implement a coordinated school health education program.

(IX) Understands the importance of ongoing professional development for health education teachers.

(X) Describes the importance of modeling positive, healthful behaviors.

(ii) Assesses the health education needs and interests of students.

(I) Uses information about health needs and interests of students.

(II) Recognizes behaviors that promote or compromise health.

(iii) Plans school health instruction.

(I) Selects realistic program goals and objectives.

(II) Identifies a scope and sequence plan for school health instruction.

(III) Plans health education lessons which reflect the abilities, needs, interests, developmental levels, and cultural backgrounds of students.

(IV) Describes effective ways to promote cooperation with and feedback from administrators, parents, and other community members.

(V) Determines procedures which are compatible with school policy for implementing curricula.

(VI) Develops activities to meet program goals and objectives based on the Health/Safety, and for grades 7-12, HIV/AIDS Prevention Education Sections of Oklahoma's core curriculum and on the National Health Education Standards.

(iv) Implements school health instruction.

(I) Employs a variety of strategies to facilitate implementation of a school health education curriculum; strategies include: provides a core health education curriculum; integrates health and other content areas; uses technology as a strategy to deliver health education; involves parents, guardians, or custodians of students in the teaching/learning process.

(II) Incorporates appropriate resources and materials including: selects valid and appropriate sources of information about health; uses school and community resources within a comprehensive program; refers students to valid and appropriate sources of health information.

(III) Employs appropriate strategies for dealing with health issues.

(IV) Adapts existing health education curricular models to community and student needs and interests.

(v) Evaluates the effectiveness of school health instruction.

(I) Uses appropriate criteria and methods unique to health education for evaluating student achievement.

(II) Interprets and applies student evaluation results to improve health instruction.

(18) **Psychometrist.** The candidate for licensure and certification:

(A) Understands and integrates into practice the philosophical, historical, and legal foundations of special education as applicable to the role of the psychometrist/educational diagnostician, in the following areas, including laws, regulations, and policies/procedures related to special education assessment, placement, and due process.

(B) Demonstrates knowledge, understanding, and application of ethical issues and standards of professional practice within the educational setting, in the following areas:

(i) ethical conduct and legal issues of the profession

(ii) role and function of the psychometrist/educational diagnostician

(iii) confidentiality

(iv) professional issues/standards

(v) training standards for particular instruments and procedures

(vi) continuing professional growth/development

(C) Demonstrates knowledge and skills in assessment, diagnosis, evaluation, and eligibility determination within the multidisciplinary team process for children with disabilities who may require special education services or early childhood intervention services, as follows:

(i) collection of assessment data for infants through school-age children, including the selection, administration, accurate scoring, and reporting of instruments and procedures appropriate to the areas of concern such as basic academic skills, cognitive/intellectual, developmental, perception, language, adaptive behavior, and classroom behavior

(ii) the adequacy, appropriate use, and limitations of assessment and evaluation instruments and procedures to be used by the psychometrist/educational diagnostician for educational purposes and recommendations

(iii) nondiscriminatory assessment strategies for culturally and linguistically diverse children

(D) Has knowledge and skills in effective communication and collaboration within the multidisciplinary team process, in the following areas:

(i) consultation for instructional interventions and problem-solving

(ii) educational recommendations and decision-making

(E) Understands and integrates into practice basic psychological foundations, including:

(i) cultural diversity

(ii) child and adolescent development

(iii) human exceptionalities

(iv) learning/educational psychology

(F) Understands and integrates into practice educational foundations, including:

(i) education of the exceptional learner

(ii) instructional and remedial techniques

(iii) the educational service delivery system

(19) **Reading specialist.** The candidate for licensure and certification shall possess the competencies specified in (A) through (D) of this paragraph:

(A) **Reading philosophy and professional roles.** Competencies are:

(i) Provides reading instructions so as to facilitate the process of reading development in which teacher and learner work together as members of a community of readers.

(ii) Has knowledge of the linguistic, dialectal, and developmental differences in readers that may affect instructional strategies.

(iii) Knows the principles and issues of major theories of language development as they relate to reading instruction.

(iv) Applies flexible approaches to reading instruction that recognize the uniqueness of individual students.

(v) Develops strategies for working with school staff, other reading specialists, and professionals within and beyond the school to foster reading development for individuals and groups.

(vi) Understands reading as a constructive process in which the experience of the reader, the text, and the requirements of the reading event interact in the creation of meaning.

(vii) Identifies appropriate interaction with staff members (e.g., content, special, classroom teachers) to facilitate reading development for all students.

(viii) Recognizes factors and procedures related to the involvement of parents and/or school and community groups at all stages of reader development.

(ix) Identifies and understands procedures involved in determining curriculum needs for reading programs.

(x) Identifies criteria and/or procedures involved in planning reading curriculum.

(xi) Identifies appropriate methods and resources related to the reading process for promoting professional growth for self and school staff.

(B) **Instructional practices.** Competencies are:

(i) Understands emergent literacy development and the types of experiences and concepts that support learning to read.

(ii) Applies knowledge of and provides appropriate instruction of graphophonemic relationships.

(iii) Understands the relationship among word knowledge (i.e., word attack and word recognition), reading fluency, and comprehension.

(iv) Identifies various word attack strategies (i.e., semantic clues, syntactic clues, graphophonemic clues), and various word recognition strategies (i.e., those that promote meaningful vocabulary growth).

(v) Provides appropriate instruction of strategies that promote comprehension at the literal, inferential, and critical/evaluative levels for both narrative and expository texts.

(vi) Understands the importance of adjusting reading strategies for different reading purposes.

(vii) Provides appropriate instruction of various techniques and study strategies (i.e., locating, organizing, and interpreting information).

(viii) Identifies content area reading strategies that activate and/or develop background knowledge.

(ix) Assists students in applying reading-related strategies to new learning situations.

(x) Understands the issues and procedures involved in teacher modeling, teacher-guided application, and independent practice.

(xi) Develops proficiencies in providing instruction associated with a variety of reading instructional approaches, including phonics, language experience, basal (basic) readers, and literature-based.

(xii) Implements cooperative learning strategies during reading instruction.

(xiii) Analyzes the strengths and weaknesses of the use of readability formulas in assessing instructional materials.

(xiv) Identifies appropriate criteria for selecting instructional materials (e.g., textbooks, reference books, computer software).

(xv) Analyzes issues and procedures involved in modifying curriculum to meet the needs of individual students.

(xvi) Recognizes the factors involved in organizing reading instruction to encourage individual student success.

(xvii) Promotes meaningful parent/guardian-child interaction related to reading.

(xviii) Creates a reading environment to increase student's motivation to read widely and independently and to promote reading as a lifelong habit.

(C) **Reading diagnosis.** Competencies are:

(i) Identifies factors that contribute to reading difficulties.

(ii) Understands the nature of reading difficulties (e.g., students' knowledge and strategies, factors embedded in the reading materials, instructional factors).

(iii) Implements, interprets, and uses informal and formal assessment and evaluation procedures for identifying and diagnosing reading difficulties (e.g., observation, criterion-referenced tests, norm-referenced tests, miscue analysis, informal reading inventories, anecdotal records).

(iv) Understands, analyzes, and creates case studies for diagnostic purposes.

(v) Identifies issues, procedures, and limitations involved in using oral diagnostic tests, silent diagnostic tests, visual and auditory screening, and observational diagnostic techniques.

(vi) Identifies activities and/or strategies appropriate for individual or group instruction for students with reading difficulty.

(D) **Evaluation and assessment.** Competencies are:

(i) Identifies characteristics, strengths, and weaknesses of formal and informal tests and instruments (i.e., criterion-referenced, norm-referenced, achievement tests, diagnostic tests, checklists, observations, and anecdotal records.)

(ii) Analyzes issues involved in the use of tests and other evaluation instruments for classification or placement, diagnosis, or other evaluative purposes.

(iii) Selects tests or other instruments appropriate for a given evaluation purpose.

(iv) Understands the principles and/or procedures involved in the interpretation of test results.

(v) Identifies procedures for cooperating with various professionals in assessment, evaluation, and instructional planning for students with special needs.

(vi) Identifies criteria for evaluating reading programs.

(20) **Reserve Officers' Training Corps (ROTC).** Competency for ROTC certification will be verified by a recommendation from the appropriate ROTC Regional Headquarters.

(21) **School counselor.**

(A) The candidate for licensure and certification:

(i) Uses an understanding of human development to provide a comprehensive, developmental guidance and counseling program.

(ii) Understands the impact of environmental influences on students' development and achievement, and helps students develop strategies to resolve or cope with situations that may hinder learning.

(iii) Demonstrates an appreciation of human diversity by providing equitable guidance and counseling services for all students and by promoting a climate of mutual respect that helps students value themselves and others.

(iv) Uses effective leadership skills to plan, implement, and evaluate a comprehensive, developmental guidance and counseling program to address the needs of all students.

(v) Provides guidance and counseling services to address the needs and concerns of students and to help students develop skills to use in future situations.

(vi) Facilitates the educational and career development of individual students to help all students achieve success.

(vii) Uses formal and informal assessment to provide information about and to students, to monitor student progress, and to recommend changes to the student's educational environment.

(viii) Consults with parents and school personnel, provides professional expertise, and establishes collaborative relationships that foster a support system for students, parents, and the school community.

(ix) Establishes strong and positive ties with the home and the community to promote and support students' growth in school and beyond the school setting.

(x) Has knowledge of professional ethical codes, the importance of professional development, and the need to work with colleagues to advance the profession.

(B) Competency for School Counselor certification may also be verified by the Nationally Certified School Counselor (NCSC) credential.

(22) **School nurse.** Competency for School Nurse certification will be verified by a current registered nurse's license issued by the Oklahoma State Board of Nurse Registration and Nursing Education.

(23) **School psychologist.**

(A) The candidate for licensure and certification:

(i) Understands and integrates into practice the principles of professional school psychology, including:

(I) ethical conduct and legal issues

(II) confidentiality

(III) role and function of the school psychologist

(IV) service delivery models

(V) professional issues/standards

(VI history and foundations

(VII) continuing professional growth/development

(ii) Demonstrates knowledge and skills in a comprehensive range of assessment, diagnosis,

evaluation, and eligibility or intervention determination within the multidisciplinary team process, including:

(I) for children with disabilities who may require special education, early childhood intervention services, or other exceptional needs

(II) assessment for interventions

(III) collection of assessment data for infants through school-age children, including the selection, administration, accurate scoring, reporting, and interpretation of instruments and procedures appropriate to the areas of concern

(IV) the adequacy, appropriate uses, and limitations of assessment and evaluation instruments and procedures to be used by the school psychologist

(V) nondiscriminatory assessment strategies for culturally and linguistically diverse children

(iii) Demonstrates knowledge and skills in prevention, intervention, consultation, and counseling, including:

(I) behavioral and social skills

(II) cognitive/intellectual

(III) child developmental

(IV) academic learning/instructional

(V) mental health needs

(VI) crisis prevention/intervention

(iv) Demonstrates knowledge and skills in effective communication and collaboration, including:

(I) consultation for interventions and problem-solving

(II) recommendations and decision-making concerning educational and mental health needs of children

(III) working with families, children, professionals, and other service systems

(v) Demonstrates knowledge and application of statistics, research methodologies/designs, measurement, and program evaluation.

(vi) Understands and integrates into practice psychological foundations including:

(I) biological bases of behavior (developmental, neuropsychological, physiological, and other biological influences on behavior)

(II) social bases of behavior (social psychology and development)

(III) cultural diversity and cultural bases of behavior

(IV) child and adolescent development

(V) human exceptionalities and individual differences

(VI) human learning

(vii) Understands and integrates into practice educational foundations, including:

(I) education of the exceptional learner

(II) instructional and remediation techniques/intervention methods

(III) organization and operation of the schools

(IV) the educational and alternative service delivery systems

(B) Competency for School Psychologist certification may also be verified by the Nationally Certified School Psychologist (NCSP) credential.

(24) **Elementary science.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of one's own teaching and of student learning. In doing this, one

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and

resources needed for developing science skills. In doing this, one

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies to implement an integrated/ interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and to understand the interaction between the sciences and the process skills. Content areas and concepts within each are listed in subparagraphs (A) through (C) herein:

(i) Physical science content

(I) Properties of objects and materials

(II) Properties and changes of properties in matter

(III) Position and motion of objects

(IV) Motion and force

(V) Light, heat, electricity, and magnetism

(VI) Transfer of energy

(ii) Earth/space content

(I) Properties of earth materials

(II) Objects in the sky

(III) Changes in earth and sky

(IV) Structure of the earth system

(V) Earth's history

(VI) Earth in the solar system

(iii) Life science content

(I) The characteristics of organisms

(II) The life cycle of organisms

(III) Organisms and environment

(IV) Structure and function in living systems

(V) Reproduction and heredity

(VI) Regulation and behavior

(VII) Population and ecosystem

(VIII) Diversity and adaption of organisms

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades K through 8. Identified science concepts and/or science content areas are:

(i) System, order and organization

(ii) Constancy, change, equilibrium and measurement

(iii) Form and function

(iv) Abilities of technological design

(v) Abilities to distinguish between natural objects and objects made by humans

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) History of science

(x) Personal health

(xi) Characteristics and changes in populations

(xii) Population, resources, and environment

(xiii) Types of resources

(xiv) Natural hazards

(xv) Changes in environments

(xvi) Science and technology in local challenges

(xvii) Risk and benefits

(xviii) Science and technology in society

(25) **Earth science 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills, attitudes, and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies to implement an integrated interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understand the interaction between the sciences and the process skills. Identified Earth/Space Science content areas are:

(i) Structure of the earth system

(ii) Earth's history

(iii) Earth in the solar system

(iv) Energy in the Earth system

(v) Geochemical cycles

(vi) The universe and Earth's system

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified science concepts and/or science content areas are:

(i) System, order and organization

(ii) Evidence, models and explanation

(iii) Constancy, change, equilibrium and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(26) **Biological sciences 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Makes the available science tools, materials, media, and technological resources accessible to students.

(iv) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies to implement an integrated interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Biological Sciences content areas are:

(i) Structure and function in living systems

(ii) Reproduction and heredity

(iii) Regulation and behavior

(iv) Population and ecosystem

(v) Diversity and adaption of organisms

(vi) The cell

(vii) The molecular basis of heredity

(viii) Biological adaptation

(ix) The interdependence of organisms

(x) Matter, energy, organization in living systems

(xi) Behavior of organisms

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(27) **Physical sciences 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies and use integrated and interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Physical Science concepts and content areas are:

(i) Properties and changes of properties in matter

(ii) Motions and force

(iii) The structure of atoms

(iv) Structure and properties of matter

(v) Chemical reactions

(vi) Conservation of energy

(vii) Interactions of energy and matter

(viii) The earth system

(ix) The Universe

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(28) **Chemistry 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies and use integrated and interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Chemistry concepts and content areas are:

(i) Structures and properties of matter

(ii) Chemical reactions

(iii) Transfer of energy

(iv) The structure of atoms

(v) Properties and changes of properties in matter

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(29) **Physics 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies and use integrated and interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Physics concepts and content areas are:

(i) Motions and forces

(ii) Conservation of energy

(iii) Transfer of energy

(iv) Interactions of energy and matter

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality
(xx) Natural and human induced hazards
(xxi) Science and technology in society
(xxii) Science and technology in local, national, and global challenges

(30) **Social Studies**

(A) **United States History/Oklahoma History/government/economics.** The candidate for licensure and certification:

(i) Knows the major themes of United States history and their interrelatedness.
(ii) Understands how the political growth, major events, and individuals affected the development of the United States.
(iii) Examines and analyzes historical documents which contributed to the establishment and growth of the government of the United States.
(iv) Identifies and describes events, trends, individuals, and movements which shaped the social, economic, and cultural development of the United States.
(v) Analyzes events and identifies individuals who defined and continue to impact the role of the United States in world affairs.
(vi) Knows the roles and function of government and the foundations, structure, and function of American government.
(vii) Identifies and explains the rights and responsibilities of citizens of the United States.
(viii) Describes the characteristics of local and state governments and the national government, and the relationships among the different levels of government.
(ix) Analyzes how the American political process works and the relationship of the process to the individual as a citizen of the state and the nation.
(x) Identifies and analyzes the events which led to Oklahoma's historical, political, economic, and cultural development.
(xi) Identifies important individuals and groups which have had an influence on Oklahoma's heritage.
(xii) Identifies the diverse geographic features and resources found in Oklahoma and describes their influence on Oklahoma's historical development and economy.
(xiii) Understands basic application of economic theories.
(xiv) Interprets economic trends in historical, political, and geographic contexts.
(xv) Analyzes the influence of the past on the present and uses a knowledge of history and government to anticipate and plan for the future, evaluating alternative courses of action.
(xvi) Applies the skills of analysis, interpretation, research, and decision-making to develop an understanding of history, government, and economic concepts.
(xvii) Knows the content of the Oklahoma core curriculum for United States History, Oklahoma History, government, and economics.

(B) **World History/geography.** The candidate for licensure and certification:

(i) Compares and contrasts differing sets of ideas, personalities, and institutions of world cultures and major historical periods.
(ii) Analyzes the cause and effect of relationships, multiple causation and perspectives, including the importance of the individual on historical events.
(iii) Analyzes the influence of the past on the present and uses a knowledge of history and geography to anticipate and plan for the future, evaluating alternative courses of action.
(iv) Interprets given historical data in order to evaluate information in its context.
(v) Knows the six elements of geographic organization: the world in spatial terms, places and regions, physical systems, human systems, environment and society, and application of geographic data, and applies them to developing an understanding of geography concepts.
(vi) Applies the skills of analysis, interpretation, research, and decision-making to develop an understanding of history and geographic concepts.
(vii) Knows the content of the Oklahoma core curriculum for World History and Geography.

(C) **Psychology/sociology.** The candidate for licensure and certification:

(i) Exhibits a basic intellectual grasp of psychological and sociological theories, vocabulary, history, and recent trends in the fields of psychology and sociology.
(ii) Understands basic concepts relative to social, developmental, abnormal and clinical psychology, learning theory (classical, operant, and cognitive), and other significant areas in the discipline of psychology, such as the scientific method.
(iii) Knows basic brain-based research and theory, and how biology and behavior interact.
(iv) Recognizes the differences among experimental, classical, and conditioning approaches to the study of psychology.
(v) Analyzes and interprets how today's psychologists view behavior in the following areas: the biological, the cognitive, the person-centered, and the psycho-dynamic perspectives.
(vi) Knows the theories and measurement of intelligence testing.
(vii) Knows basic concepts relative to group behavior, ethnicity, social mores, crime, demographics and current social issues.

(viii) Knows and analyzes culture, social structure, social stratification, social institutions, socialization, social movements, and social problems, as sociological concepts.

(ix) Knows and applies the basic sociological research processes, e.g., hypothesis formulations, sampling

(31) **Special Education (birth through twelfth grade).** For purposes of providing special education services and identifying competencies deemed necessary for licensure and certification, four areas of disabilities have been identified within the overall field of special education; these are Blind/Visual Impairment, Deaf/Hard of Hearing, Mild-Moderate Disabilities, and Severe-Profound/Multiple Disabilities. Competencies identified at the early childhood level and deemed common to all areas of disabilities are addressed in (A) and apply to all candidates for licensure and certification in any area of special education. Additional competencies in each of the four areas listed above in this paragraph are addressed in (B) through (E).

(A) **Competencies common to all areas of disabilities.** The candidate for licensure and certification:

(i) Understands the historical, social, and ethical foundations; legal and regulatory; and current trends and issues of early childhood, early childhood special education, and special education.

(ii) Identifies specific/common disabilities in children and the implications for development and learning.

(iii) Plans and implements programming and curricula using current best practices and principles of early childhood education.

(iv) Understands typical and atypical development and the interdependency of all developmental areas, and respects each child's unique characteristics and their implications for learning.

(v) Demonstrates knowledge and skills in selection and administration of developmental screening, assessment, and evaluation instruments and methods which are comprehensive, nondiscriminatory for linguistic and cultural differences, formal and informal, and appropriate for children with early childhood disabilities.

(vi) Participates and collaborates with all team members in conducting the evaluation/assessment within the multidisciplinary team process.

(vii) Understands and demonstrates knowledge of the individualized family service plan (IFSP)/individualized education program (IEP) process by:

(I) using assessment results, in partnership with the family and other team members, to develop the IFSP/IEP

(II) monitoring IFSP/IEP progress

(viii) Understands and implements early childhood curricula by adapting educational strategies, schedules and environments (individual, group, home settings) to meet the specific needs, interests, and experiences of all children.

(ix) Understands and participates in the transition process across programs and service systems by:

(I) planning for and linking current developmental learning experiences and teaching strategies with those of the next educational setting

(II) communicating options for programs and services at the next level, while assisting the family in planning for transition.

(x) Develops and uses formative and summative program evaluation to ensure comprehensive quality of programs and services for children and their families.

(xi) Collaborates and consults regularly with families, other team members, and agencies to enhance and support children's learning and development by:

(I) assisting families in identifying resources, priorities, and concerns, and in accessing appropriate services

(II) respecting parents' choices and goals for their children

(III) implementing services for children and their families, consistent with laws, regulations, and procedural safeguards

(xii) Uses positive and supportive early childhood guidance, teaching, and behavioral strategies which help all children learn to make responsible decisions regarding their own behavior and contribute to the development of self-control, self-motivation, and self-worth.

(xiii) Demonstrates professionalism and ethical practice, including:

(I) advocacy on behalf of young children and their families to improve quality of programs and services for young children and for early childhood special education

(II) implementation of a professional development plan which incorporates best practices and principles.

(B) **Blind/visual impairment.** The candidate for licensure and certification:

(i) Understands the philosophical, historical, and legal foundations of special education for students with visual impairment including.

(I) trends and issues in special education

(II) special education policies and procedures

(III) laws and regulations regarding special education

(ii) Demonstrates knowledge of characteristics of students with visual impairments.

(iii) Demonstrates knowledge and skills in assessment, diagnosis, evaluation, and eligibility determination within the multidisciplinary team

process for students with visual impairments including:

(I) procedures relevant to the impact of specific visual disorders on learning and experience, as well as procedures used for screening, prereferral, referral, and identification of students with visual impairments:

(II) vision screening methods

(III) functional vision assessment

(IV) learning media assessment

(V) orientation and mobility

(VI) independent living skills

(VII) vocational skills

(VIII) assistive technology

(IX) recreation and leisure skills

(X) classroom observation

(iv) Understands and demonstrates knowledge of the individualized education programs (IEP) process by:

(I) using assessment results, in partnership with team members, to develop the IEP

(II) monitoring IEP progress

(v) Demonstrates knowledge and skills to plan and implement appropriate and effective individualized education programs for students with visual impairments, based upon knowledge of subject matter and adaptation of curriculum and materials to meet individual abilities and sensory, conceptual and communication needs, including:

(I) social interaction skills

(II) recreation and leisure skills

(III) use of assistive technology

(IV) prerequisite skills and concepts for orientation and mobility instruction

(V) independent living skills

(VI) career education

(VII) visual efficiency skills

(VIII) literacy skills

(IX) organizational skills

(vi) Plans and manages supportive educational environments relative to the student's specific visual condition, including:

(I) acquisition and use of unique assistive technology (e.g., computers, printers, scanners, screen access, note-taking devices, software, speech output devices, CCTV, etc.)

(II) acquisition and use of specialized equipment and materials (Braille writer, abacus, slate and stylus, paper, Braille/large print/cassette textbooks, tactile maps, charts, graphs, optical, and nonoptical aids, etc.)

(III) modification of the physical environment

(IV) implementation of appropriate instructional strategies

(V) incorporation of basic orientation and mobility skills

(vii) Demonstrates knowledge and applies skills relative to the management of student behavior and social interaction skills unique to students with visual impairments, including:

(I) influences of the disability (ies) and other factors impacting the child's behavior and social skills

(II) instruction in social interaction skills, adaptive behavior, and appropriate behaviors

(III) appropriate behavior management and ethical considerations using a variety of interventions and techniques

(viii) Demonstrates knowledge and skills in communication and collaborative partnerships, including:

(I) communication with families, professionals, ancillary personnel, student peers, and community members to improve the quality of education for students with visual impairments

(II) interrelationships of resource and related service providers

(III) educational activities regarding specific visual conditions through inservice, consultation, etc.

(IV) transition planning

(ix) Demonstrates knowledge and skills to promote successful transitions at all levels of the education process and in various environments, including:

(I) completion of secondary level program/postsecondary planning

(II) transitions across programs and service delivery systems

(x) Demonstrates knowledge and skills in providing an appropriate education for students in the least restrictive environment, including the full continuum of placement alternatives

(xi) Demonstrates management skills pertaining to the various service delivery models representing the full continuum of placement options for students with visual impairments, including:

(I) time management and scheduling

(II) record keeping

(III) prioritizing caseload

(IV) roles and responsibilities

(V) travel issues relevant to service delivery

(VI) site specific climate and culture

(xii) Demonstrates professional and ethical conduct and advocacy for the unique needs of all students with visual impairments regardless of the availability of services.

(C) **Deaf/hard of hearing.** The candidate for licensure and certification:

(i) Understands the philosophical, historical, and legal foundations of special education for students who are deaf or hard of hearing, including:

(I) trends and issues in special education

(II) special education policies and procedures

(III) laws and regulations regarding special education

(ii) Demonstrates knowledge of characteristics and development of students who are deaf or hard of hearing, including:

(I) communication features (visual, spatial, tactile, auditory) necessary to enhance cognitive, emotional, and social development

(II) etiologies (causes) of hearing loss

(III) effects of onset, age of identification, and provision of services

(iii) Demonstrates knowledge and skills in assessment, diagnosis, evaluation, and eligibility determination within the multidisciplinary team process for students who are deaf or hard of hearing, including

(I) use of the natural/native/preferred language or mode of communication of the student

(II) interpretation of results for use in educational programming

(iv) Understands and demonstrates knowledge of the individualized education program (IEP) process by:

(I) using assessment results, in partnership with team members, to develop the IEP

(II) monitoring IEP progress

(v) Demonstrates knowledge and skills to plan and implement appropriate and effective instruction for students who are deaf or hard of hearing based upon knowledge of subject matter, curriculum goals, and students' individual abilities and needs by use of:

(I) multimedia skills

(II) techniques for modifying and adapting curriculum and materials to meet physical, sensory, cognitive, cultural, and communication needs in various learning environments

(vi) Plans and manages supportive teaching and learning environments that maximize opportunities for visually oriented and/or auditory learning and facilitate participation of students who are deaf or hard of hearing using:

(I) knowledge of current devices and assistive technology, including their application and resources (e.g., captioning, computers, augmentative communication devices, etc.)

(II) classroom management techniques

(vii) Demonstrates knowledge and skills in managing student behavior and social interaction skills, including:

(I) appropriate behavioral management and ethical considerations using a variety of interventions and techniques

(II) influences of the disability(ies) and other factors impacting the child's behavior and social interaction skills

(viii) Understands how language develops naturally and that early comprehensible communication influences the development of the whole child.

(ix) Demonstrates proficiency in the languages and modes of communication that are used in the instruction of students who are deaf or hard of hearing.

(x) Understands the social and cultural aspects of the deaf perspective and deaf experience.

(xi) Demonstrates knowledge and skills in communication and forming collaborative partnerships with families, professionals, and community members to improve the quality of education for students who are deaf or hard of hearing.

(xii) Demonstrates knowledge and skills to promote successful transitions at all levels of the education process and in various environments, including:

(I) completion of secondary level program/postsecondary planning

(II) transitions across programs and service delivery systems

(xiii) Demonstrates knowledge and skills in providing an appropriate education for students in the least restrictive environment, including the full continuum of placement alternatives.

(xiv) Demonstrates professional and ethical conduct in matters related to the education of students who are deaf or hard of hearing.

(D) **Mild-moderate disabilities.** The candidate for licensure and certification will demonstrate his/her mastery of these standards through the master of the Council for Exceptional Children's (CEC) Core Knowledge and Skills and through the mastery of the CEC Knowledge and Skill Base for Teachers of Students in Individualized General Curriculums. The candidate:

(i) Understands the philosophical, evidence-based principals and theories, historical and legal foundations of special education, and how these influence professional practices. These would include:

(I) trends and issues in special education;

(II) special education policies and procedures;

(III) laws and regulations regarding special education;

(IV) issues of human diversity and its relevance to special education;

(V) human issues that influence the field of special education; and

(VI) relationships of special education to the organization and functions of schools, school systems, and agencies.

(ii) Understands the similarities and differences in human development, the characteristics of all learners, and how exceptional conditions

interact with the domains of human development to respond to varying abilities and behaviors of individuals with disabilities while demonstrating respect for their students.

(iii) Understands the effects that a disability (including aspects of cognition, communication, physical, medical, and social/emotional) can have on learning and how primary language, culture and familial background can interact with the student's disabilities to impact academic, and social abilities, attitudes, values, interests and career options. The understanding of these learning differences and their possible interactions provide the foundation upon which a special educator individualizes instruction to provide meaningful and challenging learning for students with disabilities.

(iv) Possesses a repertoire of evidenced-based instructional strategies to individualize instruction for students with disabilities and emphasizes the development, maintenance, and generalization of knowledge and skills across environments, settings, and the life span. These evidenced-based instructional strategies should:

(I) promote positive learning results in the general curriculum in age-appropriate settings;

(II) promote multiple methods for teaching reading;

(III) modify learning environments;

(IV) enhance critical thinking, problem solving and performance skills;

(V) promote self-determination;

(VI) enhance integration and coordination of related services for educational benefit; and

(VII) promote transition.

(v) Demonstrates knowledge and skills in creating positive and safe learning environments for students with disabilities, and that also foster active engagement of students with disabilities. In addition, special educators foster environments that:

(I) value diversity;

(II) promote independence and productivity;

(III) assist general education colleagues in integrating students with disabilities;

(IV) use direct motivational and instructional interventions;

(V) utilize positive behavior supports and crisis management techniques;

(VI) guide and direct paraprofessionals and others; and

(VII) provide specialized school health practices and techniques for health and safety.

(vi) Understands typical and atypical language development and uses strategies to enhance language development and teach communication skills to students with disabilities. This is accomplished by using:

(I) effective language models;

(II) augmentative, alternative and assistive technologies;

(III) communication strategies and resources to facilitate understanding of subject matter for students with disabilities and those students with disabilities whose primary language is not English; and

(IV) matching communication methods to the student's language proficiency and cultural and linguistic differences.

(vii) Develops long- and short-range instructional plans anchored in both general and special education curricula emphasizing:

(I) effective modeling;

(II) efficient guided practice;

(III) modifications based on ongoing analysis of the individuals learning progress;

(IV) collaboration;

(V) individualized transition plans;

(VI) use of appropriate technologies; and

(VII) positive behavior supports.

(viii) Understands legal policies and ethical principals of multiple types of assessment information related to referral, eligibility, program planning, instruction and placement of students with disabilities including those from culturally and linguistically diverse backgrounds. Special educators use assessment information to identify supports and adaptations required for students with disabilities to access general and special curricula and participate in school, system and statewide assessment programs. Special educators regularly monitor students' progress and use appropriate technologies to support assessments. Special educators must understand:

(I) measurement theory and practices for addressing validity, reliability, norms, bias, and interpretation of assessment results and

(II) appropriate use and limitations of various assessment.

(ix) Demonstrates knowledge and skills regarding legal, professional, and ethical practices including:

(I) sensitivity to the many aspects of diversity;

(II) engaging in professional growth as lifelong learners;

(III) keeping current with evidence-based effective practices; and

(IV) participating in professional activities that benefit individuals with disabilities and their families.

(x) Routinely and effectively collaborates with families, colleagues, related service providers, community agencies and other resources in positive and culturally responsive ways to assure that the needs of students with disabilities are

addressed including facilitation of successful transitions of students with disabilities across settings and services.

(E) **Severe-profound/multiple disabilities.** The candidate for licensure and certification will demonstrate his/her mastery of these standards through the mastery of the Council for Exceptional Children's (CEC) Core Knowledge and Skills and through the mastery of the CEC Knowledge and Skill Base for Teachers of Students in Independence Curriculums. The candidate:

(i) Understands the philosophical, evidence-based principals and theories, historical and legal foundations of special education, and how these influence professional practices. These would include:

(I) trends and issues in special education;

(II) special education policies and procedures;

(III) laws and regulations regarding special education;

(IV) issues of human diversity and its relevance to special education;

(V) human issues that influence the field of special education; and

(VI) relationships of special education to the organization and functions of schools, school systems, and agencies.

(ii) Understands the similarities and differences in human development, the characteristics of all learners, and how exceptional conditions interact with the domains of human development to respond to varying abilities and behaviors of individuals with disabilities while demonstrating respect for their students.

(iii) Understands the effects that a disability (including aspects of cognition, communication, physical, medical, and social/emotional) can have on learning and how primary language, culture and familial background can interact with the student's disabilities to impact academic, and social abilities, attitudes, values, interests and career options. The understanding of these learning differences and their possible interactions provide the foundation upon which a special educator individualizes instruction to provide meaningful and challenging learning for students with disabilities.

(iv) Possesses a repertoire of evidenced-based instructional strategies to individualize instruction for students with disabilities and emphasizes the development, maintenance, and generalization of knowledge and skills across environments, settings, and the life span. These evidenced-based instructional strategies should:

(I) promote positive learning results in general and special curricula in age-appropriate settings, especially functional curricula;

(II) modify learning environments;

(III) utilize community-based instruction and vocational instruction;

(IV) enhance communication skills;

(V) enhance critical thinking, problem solving and performance skills;

(VI) promote self-determination;

(VII) enhance integration and coordination of related services for educational benefit; and

(VIII) promote transition.

(v) Demonstrates knowledge and skills in creating positive and safe learning environments for students with disabilities, and that also foster active engagement of students with disabilities. In addition, special educators foster environments that:

(I) value diversity;

(II) promote independence and productivity;

(III) assist general education colleagues in integrating students with disabilities;

(IV) use direct motivational and instructional interventions;

(V) utilize positive behavior supports and crisis management techniques;

(VI) guide and direct paraprofessionals and others; and

(VII) provide specialized school health practices and techniques for health and safety.

(vi) Understands typical and atypical language development and uses strategies to enhance language development and teach communication skills to students with disabilities. This is accomplished by using:

(I) effective language models;

(II) augmentative, alternative and assistive technologies;

(III) communication strategies and resources to facilitate understanding of subject matter for students with disabilities and those students with disabilities whose primary language is not English; and

(IV) matching communication methods to the student's language proficiency and cultural and linguistic differences.

(vii) Develops long- and short-range instructional plans anchored in both general and special education curricula emphasizing:

(I) effective modeling;

(II) efficient guided practice;

(III) modifications based on ongoing analysis of the individuals learning progress;

(IV) collaboration;

(V) individualized transition plans;

(VI) use of appropriate technologies; and

(VII) positive behavior supports.

(viii) Understands legal policies and ethical principals of multiple types of assessment information related to referral, eligibility, program

planning, instruction and placement of students with disabilities including those from culturally and linguistically diverse backgrounds. Special educators use assessment information to identify supports and adaptations required for students with disabilities to access general and special curricula and participate in school, system and statewide assessment programs. Special educators regularly monitor students' progress and use appropriate technologies to support assessments. Special educators must understand:

(I) measurement theory and practices for addressing validity, reliability, norms, bias, and interpretation of assessment results and

(II) appropriate use and limitations of various assessments.

(ix) Demonstrates knowledge and skills regarding legal, professional, and ethical practices including:

(I) sensitivity to the many aspects of diversity;

(II) engaging in professional growth as lifelong learners;

(III) keeping current with evidence-based effective practices; and

(IV) participating in professional activities that benefit individuals with disabilities and their families.

(x) Routinely and effectively collaborates with families, colleagues, related service providers, community agencies and other resources in positive and culturally responsive ways to assure that the needs of students with disabilities are addressed including facilitation of successful transitions of students with disabilities across settings and services.

(32) **Speech/drama/debate (Secondary).** The candidate for licensure and certification:

(A) Maintains a current knowledge of concepts of the field of speech communication including: oral interpretation of literature, theater, the electronic media, public speaking, argumentation, and critical thinking skills.

(B) Applies comprehension, analysis, interpretation, synthesis, and evaluation of vocal, verbal and nonverbal messages.

(C) Applies appropriate learning strategies for critical thinking, research, organization, and presentation of messages appropriate to participation in a democratic society.

(D) Communicates effectively in interpersonal, small group, and public communication situations using appropriate language and nonverbal signals.

(E) Understands the influence of social and historical contexts, and culture on public address and literature of the theater.

(F) Understands the impact of cultural diversity upon the communication process.

(G) Establishes a communication climate which encourages reflection, creativity, and critical thinking.

(H) Uses differing assessment strategies to evaluate student competencies in a variety of speaking/listening situations.

(I) Uses technology (i.e., videotaping of presentations, computers to generate visual aids and as a research tool) to enhance instruction.

(J) Understands and uses teaching strategies appropriate for the analysis and presentation of a variety of forms (genres) of public address and literature of the theater, available in electronic media and from printed sources.

(K) Understands the importance of effective communication skills in the personal and professional arenas.

(L) Understands the role of co-curricular and extracurricular activities in the development of student interest as an extension of the classroom instruction.

(M) Understands, teaches, and implements Oklahoma's Core Curriculum.

(33) **Speech-language pathologist.**

(A) The candidate for licensure and certification:

(i) Understands the models, theories and philosophies that provide the basis for the practice of speech/language pathology, in the following knowledge areas:

(I) content areas in speech/language pathology (language, articulation, voice, fluency, augmentative communication)

(II) etiologies which may contribute to communication impairments

(III) a working understanding of other assessments (medical, psychological, audiological, etc.)

(IV) modality (spoken, written, sign)

(ii) Accommodates the individual learning styles and communication/educational needs of the student.

(iii) Demonstrates the ability to screen, evaluate, and diagnose students with suspected communication impairments using a variety of formal and informal procedures.

(iv) Plans and implements intervention strategies and the appropriate service delivery models for students with communication impairments, including:

(I) determines least restrictive environment

(II) provides ongoing assessment and monitors IEP progress

(III) develops individualized education program (IEP)

(v) Facilitates the development of the student's functional and literate communication skills (i.e., how communication occurs including written language) across environments, including:

(I) developing modifications/adaptations

(II) determining transition service needs

(vi) Recognizes and understands the relationship among behavior, social interaction and communication impairments, and is able to determine realistic expectations for the student's personal and social behavior in various settings.

(vii) Uses collaborative strategies in working with parents, school, and community to address the needs of students with communication impairments.

(viii) Promotes and maintains competence and integrity in the practice of speech/language pathology as follows:

(I) develops a plan for professional development

(II) identifies community agencies and resources

(ix) Implements practices that recognize the multicultural issues and the effect of cultural and linguistic diversity on students' communication skills and learning styles.

(x) Demonstrates knowledge of laws and regulations pertaining to students with communication impairments.

(B) Competency for Speech-language Pathologist certification may also be verified by the Certificate of Clinical Competence (C.C.C.) from the American Speech-Language Hearing Association (ASHA).

(34) **Agricultural education.** The candidate for licensure and certification shall possess the competencies specified in (A) through (F).

(A) **Agricultural business/marketing.** The candidate for licensure and certification understands the fundamental principles of agricultural business/marketing and management including principles of basic recordkeeping and methods for acquiring and managing agricultural finances.

(B) **Animal science.** The candidate for licensure and certification:

(i) Selects and handles livestock, recognizes factors related to the safe handling of animals and animal products which become food for human consumption, and understands the importance of alternative agricultural enterprises.

(ii) Understands concepts and principles of animal reproduction and the importance of livestock health and nutrition.

(C) **Plant and soil science.** The candidate for licensure and certification:

(i) Understands concepts, principles, and laboratory skills related to plant and soil science including the importance of traditional crops and alternative enterprises.

(ii) Knows factors related to the safe handling of plants and plant products which become food for human consumption and identifies causes and characteristics of common plant pests and diseases.

(D) **Agricultural mechanics.** The candidate for licensure and certification practices:

(i) shop safety, including the operation and knowledge of hand/power tools,

(ii) basic principles/concepts of power and machinery, metals and metal processes, and

(iii) basic principles of building construction.

(E) **Natural resources.** The candidate for licensure and certification:

(i) Evaluates the relationship between agriculture and the management of water, land, and air quality, and

(ii) Understands concepts and principles of plant and animal environmental factors including the handling of chemicals.

(F) **Communications/leadership.** The candidate for licensure and certification:

(i) Acknowledges the foundations of agricultural education including its purpose, functions, and the background of Future Farmers of America (FFA).

(ii) Demonstrates an understanding of basic parliamentary procedure, effective oral and written communication skills, and promotes teamwork, motivation, and leadership principles.

(35) **Marketing education.** The candidate for licensure and certification shall possess the competencies specified in (A) through (N).

(A) **Orientation.** The candidate for licensure and certification applies principles of job search and preparation skills relating to resume and portfolio development, proper completion of application forms, interview preparation, career ladder analysis, and computer technology skills relating to word-processing and computerized presentations.

(B) **Marketing.** The candidate for licensure and certification:

(i) Applies principles and concepts related to marketing.

(ii) Interprets the importance of the marketing concept and functions, how marketing affects society, factors to consider in selecting a channel of distribution, and the concept of target marketing.

(C) **Mathematical skills.** The candidate for licensure and certification:

(i) Applies basic mathematical operations used in the marketing profession as it pertains to balancing a cash drawer and the automatic and manual methods of making change.

(ii) Identifies the uses of basic algebra in marketing.

(D) **Human relations.** The candidate for licensure and certification:

(i) Applies principles of communications, decision-making, and crisis management.

(ii) Identifies characteristics of professionalism on the job and the importance of social skills.

(E) **Sales.** The candidate for licensure and certification:

(i) Applies principles relating to sales, product information, customer buying decisions, motives for buying, and sales approaches.

(ii) Demonstrates methods of handling customer/client complaints and objections.

(iii) Explains the concept and use of sales quotas.

(F) **Security precautions.** The candidate for licensure and certification:

(i) Identifies and explains prevention measures for the security problems of shoplifting, internal theft, burglary, robbery, and fraud.

(ii) Identifies common types of fraud.

(iii) Recognizes steps necessary to ensure security in shipping and receiving areas.

(iv) Identifies precautions for safety on the job.

(G) **Economics.** The candidate for licensure and certification:

(i) Applies principles related to the classification of goods and services and the types of economic resources.

(ii) Compares the types of economic systems and their relationship to the economy.

(iii) Identifies the factors which affect economics including economic utility (form, place, time, possession), competition, supply and demand, and the role of government in business.

(iv) Understands the characteristics and importance of a private enterprise system and international trade.

(v) Identifies the measure and importance of the gross domestic product (GDP) to marketing.

(H) **Promotion.** The candidate for licensure and certification:

(i) Applies principles related to the use of promotional activities, including the use of media, design and display arrangements, and the print ad.

(ii) Explains the role of the promotional plan.

(I) **Merchandising.** The candidate for licensure and certification applies principles related to shipping and receiving, inventory control systems, calculation of inventory shrinkage, and industrial purchasing.

(J) **Business ownership/entrepreneurship.** The candidate for licensure and certification:

(i) Identifies the common types of business ownership in a free enterprise system and the advantages/disadvantages of each.

(ii) Discusses the importance of marketing strategies to businesses as they apply the principles of the product mix, product/service planning, marketing decisions for a proposed business, structuring a business, and using four "Ps" of marketing - product, pricing, place, and promotional strategies.

(K) **Applied management.** The candidate for licensure and certification:

(i) Applies principles of selecting store personnel, recruiting applicants for job openings, interviewing job candidates, and reducing labor turnover.

(ii) Recognizes the importance of new-employee orientation.

(iii) Understands knowledge of employee motivational theories.

(L) **Credit.** The candidate for licensure and certification:

(i) Applies principles of extending credit to business and customers and the three Cs of credit: character, capacity to pay, and capital.

(ii) Identifies the reasons for extending credit.

(M) **Business and industry.** The candidate for licensure and certification:

(i) Develops relationships with business and industry through advisory committees, surveys, work-site learning opportunities, curriculum, and program visits.

(ii) Communicates with business and industry regarding student competencies/credentials and job performance.

(N) **Student organizations and activities.** The candidate for licensure and certification:

(i) Understands the role of student organizations in developing student professionalism and assists student organizations by coaching, chaperoning, and supervising activities.

(ii) Encourages student participation through instruction and recognition of student achievements.

(36) **Technology education.** The candidate for licensure and certification shall possess the competencies specified in (A) through (J):

(A) **Fundamentals of technology.** The candidate for licensure and certification:

(i) Understands the fundamentals of technology including important events, developments, components, and current and future trends of technology.

(ii) Defines the terms, systems, characteristics, interrelationships, and economics of technology, and their utilization in modern business and industry.

(iii) Identifies general laboratory and personal safety practices.

(B) **Problem-solving techniques.** The candidate for licensure and certification:

(i) Identifies problem-solving techniques.

(ii) Understands and applies problem-solving techniques.

(C) **Career opportunities.** The candidate for licensure and certification:

(i) Explores career opportunities based on career clusters and identifies related terms and definitions.

(ii) Identifies activities that develop employability skills.

(iii) Recognizes educational requirements and paths for occupational attainment.

(D) **Communication systems.** The candidate for licensure and certification:

(i) Understands the principles, processes, and functions of communication.

(ii) Identifies types of communication technologies.

(E) **Construction systems.** The candidate for licensure and certification:

(i) Understands and applies the principles of construction technology.

(ii) Identifies construction technologies, their effects on society, basic principles of project planning, and steps in the construction process.

(F) **Manufacturing systems.** The candidate for licensure and certification:

(i) Understands principles of manufacturing and their application.

(ii) Identifies materials, equipment, processes, and strategies utilized in manufacturing technologies.

(iii) Analyzes the role, function, and responsibilities of manufacturing in a contemporary society.

(G) **Energy, power and transportation systems.** The candidate for licensure and certification:

(i) Understands the principles and applications of energy, power, and transportation.

(ii) Identifies forms of energy, their classification, and their characteristics.

(iii) Analyzes power systems and transportation technologies, as well as their characteristics.

(iv) Analyzes environmental and economic effects on society.

(H) **Technology education delivery systems.** The candidate for licensure and certification:

(i) Understands basic principles, terminology, system design, and issues related to technology education delivery systems and telecommunication.

(ii) Identifies terms, features, relationships, and procedures associated with the selection, operation, and maintenance of computer systems and technology education software.

(iii) Analyzes factors affecting the selection of computer hardware and software.

(I) **Business and industry.** The candidate for licensure and certification develops relationships with business and industry through advisory committees, curriculum, and work-site learning opportunities.

(J) **Student organizations and activities.** The candidate for licensure and certification:

(i) Understands the role of student organizations in encouraging student participation and implementing activities that develop leadership traits.

(ii) Integrates student activities in instruction and recognizes student achievements.

(37) **Vocational business.** The candidate for licensure and certification shall possess competencies specified in (A) through (D).

(A) **Business foundations.** The candidate for licensure and certification:

(i) Understands important events, developments and trends in the history of business.

(ii) Understands business organizational structures, organizational design and their implications.

(iii) Understands the basic principles of business law and the types and characteristics of legal instruments.

(iv) Analyzes legal issues related to business.

(v) Understands business communication.

(B) **Business management.** The candidate for licensure and certification:

(i) Understands principles of business management and their applications in the decision-making process

(ii) Applies procedures for managing human resources.

(iii) Analyzes issues related to economic and social responsibilities in business.

(iv) Analyzes factors affecting business marketing decisions.

(C) **Technology systems.** The candidate for licensure and certification:

(i) Understands basic principles and terminology related to computer technology.

(ii) Understands principles of computer system design.

(iii) Applies principles of computer technology to solve problems involving information gathering and analysis.

(iv) Applies principles of computer technology to solve problems related to project and business management.

(v) Understands information processing systems.

(vi) Analyzes data storage, retrieval and transmission systems.

(vii) Understands principles of telecommunications and applications of telecommunications in business.

(viii) Analyzes ethical and security issues involving technology systems.

(D) **Business finance and economics.** The candidate for licensure and certification:

(i) Understands basic principles and applications of accounting.

(ii) Applies procedures for processing accounting data.

(iii) Understands advanced accounting concepts and procedures.

(iv) Understands basic principles and applications of macroeconomics.

(v) Analyzes business situations in terms of microeconomic theory.

(vi) Applies basic principles of consumer economics and finance.

(38) **Vocational family and consumer sciences.** The candidate for licensure and certification shall possess the competencies specified in (A) through (I).

(A) **Child development.** The candidate for licensure and certification:

(i) Applies child development concepts and guidance techniques in the care of infants, toddlers, preschool and school-age children, as well as children in crisis or with special needs.

(ii) Analyzes issues related to children's well-being, parenting, pregnancy, prenatal care, child birth, child care services, and community resources.

(B) **Foods and nutrition.** The candidate for licensure and certification:

(i) Analyzes the relationship between food, nutrients, and the body through the application of food science principles, and healthy food choices.

(ii) Understands proper food storage/handling techniques, recipe use, food product information, serving/dining etiquette, and consumer skills.

(C) **Consumer economics and management.** The candidate for licensure and certification:

(i) Applies principles related to money management, personal financial management, time management, and economics.

(ii) Analyzes advertising influences, factors related to housing selection and maintenance, factors related to motor vehicle selection and maintenance, wills, funerals, and consumer credit.

(iii) Applies consumer protection practices and skills.

(D) **Housing and interior design.** The candidate for licensure and certification:

(i) Plans living space for human needs through the evaluation of housing and financial alternatives.

(ii) Applies elements and principles of interior design including exterior styles, interior spaces, interior treatments, furniture, accessories, and appliances.

(E) **Interpersonal relationships.** The candidate for licensure and certification:

(i) Applies principles of communications, decision making, and crisis management.

(ii) Discusses factors and issues related to parenting, family life, and aging.

(iii) Identifies the importance of self-respect and of practicing socially accepted behavior.

(F) **Clothing and textiles.** The candidate for licensure and certification:

(i) Applies wardrobe planning and grooming skills.

(ii) Applies clothing selection skills, methods of stretching the clothing dollar, care and maintenance practices, construction techniques, and knowledge of types of textiles.

(G) **Careers.** The candidate for licensure and certification:

(i) Investigates careers as they relate to personal and career goals.

(ii) Understands the job application process, factors related to work etiquette, the use of technology in the workplace, and economic principles.

(H) **Business and industry.** The candidate for licensure and certification:

(i) Develops partnerships with business and industry through advisory committees, surveys, work-site learning opportunities, curriculum, and program visits.

(ii) Communicates with business and industry regarding student competencies/credentials and job performance.

(I) **Student organizations and activities.** The candidate for licensure and certification:

(i) Understands the role of student organizations in the recognition of student achievements through curricular activities.

(ii) Encourages student participation and the development of leadership traits.

(39) **Occupational agriculture, occupational family and consumer sciences, trade and industrial education, and vocational health occupations.** Competency for occupational agriculture, occupational family and consumer sciences, trade and industrial education, and vocational health occupations will be verified by passing a state or national licensure examination developed specifically to the occupation and/or occupational testing approved by the Oklahoma Department of Vocational and Technical Education. Non-degreed vocational teachers certified under rules promulgated by the State Board of Education are exempt from the provisions of House Bill 1549, except for those provisions concerning professional development programs.

(40) **Dance education.** The candidate for licensure and certification:

(A) Has a sound philosophical understanding and knowledge of dance education and creative movement and can support, justify and implement the dance education.

(B) Has a thorough knowledge of a sequential dance/creative movement curriculum that is developmentally appropriate for each grade level and inclusive of various student learning styles and those with special needs.

(C) Understands the history of dance and its role in culture and the arts worldwide.

(D) Has a working knowledge of dance integration and values the art-related competencies in Oklahoma's core curriculum.
(E) Recognizes and respects diversity and establishes environments where individuals dance content and learning are held in high regard.
(F) Understands the process of critical thinking and implements problem solving activities, analysis, reflection, decision making and creative exploration in dance.
(G) Understands the elements of dance and technical skills in performing dance including:
(i) time (i.e., fast slow, even, uneven, accent, meters)
(ii) space (i.e., levels , direction, pathways)
(iii) force (i.e., energy, weight, flow)
(iv) locomotor movements (i.e., walk, run, skip, hop, jump, slide, gallop, leap)
(v) nonlocomotor movements (i.e., bend, stretch, twist, swing)
(vi) rhythmic activities and musicality
(vii) proper skeletal alignment
(viii) efficiency and mastery of technical skills in a variety of dance forms.
(H) Understands the principals of choreography (i.e., dance improvisation, composition, and choreography).
(I) Understands the components of healthy living and fitness and the benefits of daily participation in dance activities.
(i) fitness components
(I) flexibility
(II) muscular strength
(III) agility
(IV) motor skills development and coordination
(V) body awareness, control, and balance
(VI) development and mastery of dance skills
(VII) weight control
(ii) wellness components
(I) release of stress and tension through positive dance activity
(II) positive self esteem and self-expression
(III) lifelong well being
(IV) weight control
(J) Has a working knowledge of dance choreography and teaching strategies to help students create, study, interpret and evaluate works of art.
(K) Has knowledge of dance resources including community resources, materials, equipment, and proper facilities, and can adapt a variety of resources and materials that supports students as they learn through and about dance.
(L) Promotes the understanding of dance as an artistic, kinesthetic, educational, social, cultural and theatrical experience.
(M) Provides a safe environment and creates a setting for productive learning.
(N) Collaborates with colleagues, artists and agencies in the community to promote arts education opportunities.
(O) Recognizes the important role of technology in dance education.
(P) Uses a variety of assessment and evaluation methods and can evaluate student learning.

(41) **English as a second language (ESL) PK-12.** The candidate for licensure and certification:
(A) **Language.** The candidate for licensure and certification:
(i) Demonstrates knowledge, understanding, and application of the fundamentals of linguistics as related to the development of listening, speaking, reading, and writing for social and academic purposes.
(ii) Understands and applies knowledge of current theories and practices that facilitate second language acquisition and literacy development in the classroom.
(iii) Understands the role of the primary language in acquiring English as a new language.
(iv) Understands and applies knowledge of how sociocultural variables effect individual learners in facilitating the process of learning English.
(B) **Culture.** The candidate for licensure and certification:
(i) Knows, understands, and uses the major concepts, principles, theories, and research related to the nature and role of culture in language development and academic achievement that support individual student's learning.
(ii) Understands and applies knowledge about home/school communication to enhance ESL teaching and build partnerships with students' families.
(iii) Knows, understands, and uses knowledge of how cultural groups and ESL students' cultural identities affect language learning and school achievement.
(iv) Understands and applies knowledge about world events that have an impact on ESL students' learning.
(v) Knows and uses teaching strategies that are developmentally appropriate and inclusive of various learning styles and is sensitive to the needs of diverse cultural groups.
(C) **Planning, implementation, and managing instruction.** The candidate for licensure and certification:
(i) Knows, understands, and applies concepts, research, and best practices to plan standards-based instruction based on language development and the Oklahoma core curriculum that provides for students of varying educational

backgrounds in a supportive and accepting environment.

(ii) Knows, manages, and implements instruction around standards-based subject matter and language learning objectives that incorporates a variety of activities and learning opportunities that integrate listening, speaking, reading, writing, and comprehension for a variety of academic and social purposes.

(iii) Knows and is able to use a variety of resources and instructional strategies to teach ESL students the English language and content areas.

(iv) Understands and applies the following competencies in reading instruction as appropriate to the abilities of the student.

(I) Knows the stages of language development and the structure of the English language and alphabetic writing system including phonology, morphology, and orthography and their relationships to spelling and meaning.

(II) Understands that primary language (oral) directly impacts the secondary languages (reading, writing, spelling). Knows and applies knowledge of implicit and explicit instruction in developing oral language. Knows the relationship of oral language to literacy.

(III) Knows the developmental process of reading in order to assess, interpret, describe, develop appropriate instruction, monitor, reteach and reassess student's reading performance for concepts about print, phonological and phonemic awareness, phonics, spelling, word recognition, vocabulary, comprehension, fluency, and writing.

(IV) Identifies and applies all developmental levels of phonemic awareness to provide appropriate instruction in understanding words are made up of phonemes and that phonemes can be rearranged and manipulated to make different words that compose oral speech.

(V) Knows and provides appropriate systematic explicit and implicit phonological instruction for the application of spelling-sound correspondences for word analysis and for structural analysis for word recognition and word meaning development.

(VI) Knows and applies the relationships between spelling patterns and sounds of speech; knows how to support the student at each stage of spelling development; knows how to focus direct and indirect instruction to guide the student toward spelling proficiency.

(VII) Knows and applies knowledge of appropriate explicit and implicit instruction for vocabulary development (e.g., prefixes, suffixes, roots, singular, and plural).

(VIII) Knows and applies strategies that promote comprehension and strategies to support children's understanding for the various elements of the different genres of text.

(IX) Knows and applies strategies and instructional approaches to support response to text and promote comprehension for literal, inferential, and critical/evaluative level (e.g., guided reading, literature and research circles).

(X) Knows and applies knowledge of instructional techniques to assist students with self-monitoring and self-corrections, (i.e., semantics, syntax, and graphophonics).

(XI) Knows and applies the instructional strategies which contribute to the development of fluent reading.

(XII) Knows how to promote children's interest and engagement in reading and writing.

(D) **Assessment.** The candidate for licensure and certification:

(i) Understands various issues of standardized assessments as they affect ESL students' learning and academic performance.

(ii) Understands different types of assessments and their purposes.

(iii) Understands and is able to use a variety of language proficiency assessment instruments.

(iv) Interprets and integrates assessment information into instructional plans.

(v) Understands the importance of different assessment strategies and uses them in the evaluation and modification of teaching and learning.

(E) **Professionalism.** The candidate for licensure and certification:

(i) Demonstrates knowledge of history, research, and current practices in the field of ESL and applies this knowledge to improve teaching and student achievement.

(ii) Pursues personal professional growth opportunities and serves as a professional resource to colleagues.

(iii) Serves as a resource liaison and advocate for ESL students and builds partnerships with students' families.

(iv) Demonstrate English fluency in listening, speaking, reading, and writing the English language.

[OAR Docket #05-748; filed 5-3-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF AGENTS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #05-827]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 17. Senior Protection In Annuity Transactions Regulation [NEW]
365:25-17-1. Purpose [NEW]
365:25-17-2. Scope [NEW]
365:25-17-3. Authority [NEW]
365:25-17-4. Exemptions [NEW]
365:25-17-5. Definitions [NEW]
365:25-17-6. Misrepresentation, fraud and incomplete comparisons of annuities [NEW]
365:25-17-7. Duties of insurers and of insurance producers [NEW]
365:25-17-8. Mitigation of responsibility [NEW]
365:25-17-9. Recordkeeping [NEW]
365:25-17-10. Advertisements [NEW]
365:25-17-11. Visit in senior's home [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 1201, et seq.
DATES:
Adoption:
March 21, 2005
Approved by Governor:
May 4, 2005
Effective:
Immediately upon approval by the Governor
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY RULES:
n/a
INCORPORATION BY REFERENCE:
n/a
FINDING OF EMERGENCY:
An imminent peril exists to the preservation of the public health, safety, and welfare, and a compelling public interest requires an emergency rule due to the necessity of providing protections for senior consumers in this state induced to purchase annuities.
ANALYSIS:
The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed. A recent case is an example of the predatory acts against our senior consumers occurring in this state. Sometime in the year 2004, a licensed non-resident insurance producer made untrue or misleading statements regarding the needs of an elderly senior consumer for new or updated living trusts and related estate planning products and services. This insurance producer used charisma and the pretext of the offer and sale of estate planning products and services to establish a close and confidential relationship with the senior consumer and to find out about the senior consumer's assets. The insurance producer then exploited this confidential relationship and used the financial information to induce the senior consumer to surrender annuities held with one insurer and to replace them through the purchase of annuities from another. The insurance producer made untrue or misleading statements about, misrepresented the attributes of, and did not fully disclose the significant disadvantages of the annuities offered to the senior consumer.
CONTACT PERSON:
Karl Kramer, Oklahoma Insurance Department, (405) 521-2746

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 17. SENIOR PROTECTION IN ANNUITY TRANSACTIONS REGULATION

365:25-17-1. Purpose

(a) The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.
(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

365:25-17-2. Scope

This regulation shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

365:25-17-3. Authority

This regulation is issued under the authority of the Unfair Trade Practices Act, 36 O.S. § 1201, et seq.

365:25-17-4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to recommendations involving:
(1) Direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this regulation; or
(2) Contracts used to fund:
(A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
(B) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
(C) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
(D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
(E) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
(F) Formal prepaid funeral contracts.

365:25-17-5. Definitions

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

"Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in a purchase or exchange of an annuity in accordance with that advice.

"Senior consumer" means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older.

365:25-17-6. Misrepresentation, fraud and incomplete comparisons of annuities

Insurers and insurance producers shall not make or issue or cause to be made or issued any recommendation or statement misrepresenting or fraudulently or unfairly making incomplete comparisons regarding the terms or conditions of any annuity contract for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract in any way whatsoever.

365:25-17-7. Duties of insurers and of insurance producers

(a) **Suitability required.** In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(b) **Producer required to obtain information from senior consumer.** Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(1) The senior consumer's financial status;

(2) The senior consumer's tax status;

(3) The senior consumer's investment objectives; and

(4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

(c) Obligation to senior consumer.

(1) Except as provided under Paragraph (2) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under Subsection A related to any recommendation if a consumer:

(A) Refuses to provide relevant information requested by the insurer or insurance producer;

(B) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(C) Fails to provide complete or accurate information.

(2) An insurer or insurance producer's recommendation subject to Paragraph (1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(d) **System to supervise recommendations of insurance producers.**

(1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:

(A) Maintaining written procedures; and

(B) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

(2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

(A) Maintaining written procedures; and

(B) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

(3) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph (1) with respect to insurance producers under contract with or employed by the third party.

(4) An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph (3) of this subsection is performing the functions required under Paragraph (1) of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(A) The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(B) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph (3) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(5) An insurer that contracts with a third party pursuant to Paragraph (3) of this subsection and that complies with the requirements to supervise in Paragraph (4) of this subsection shall have fulfilled its responsibilities under Paragraph (1) of this subsection.

(6) An insurer, general agent or independent agency is not required by Paragraph (1) or (2) of this subsection to:

(A) Review, or provide for review of, all insurance producer solicited transactions; or

(B) Include in its system of supervision an insurance producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(7) A general agent or independent agency contracting with an insurer pursuant to Paragraph (3) of this subsection shall promptly, when requested by the insurer pursuant to Paragraph (4) of this subsection, give a certification as described in Paragraph (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.

(8) No person may provide a certification under Paragraph (4)(A) of this subsection unless:

(A) The person is a senior manager with responsibility for the delegated functions; and

(B) The person has a reasonable basis for making the certification.

(e) **NASD and suitability of variable annuities.** Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

365:25-17-8. Mitigation of responsibility

(a) The commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

(2) An insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and

(3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

(b) Any applicable penalty under Sections 619 and 1435.13 of Title 36 of the Oklahoma Statutes for a violation of Section 365:25-17-7(a), (b), or (c)(2) of this regulation may be reduced or eliminated at the discretion of the Insurance Commissioner if corrective action for the senior consumer was taken promptly after a violation was discovered.

365:25-17-9. Recordkeeping

(a) Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

365:25-17-10. Advertisements

(a) Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons age 65 or older shall prominently disclose that an agent may contact the applicant if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person.

(b) No insurer, agent, broker, solicitor, or other person or other entity shall solicit persons age 65 and older in this state for the purchase of disability insurance, life insurance, or annuities through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(c) For the purposes of this section, an advertisement includes envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity.

(d) Advertisements shall not employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials, include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institutions or senior organizations.

(2) The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

(e) No advertisement may use the name of a state or political subdivision thereof in a policy name or description.

(f) No advertisement may use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any

agency who may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the Social Security Administration.

(g) No advertisement may imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(h) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(i) No insurer may use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(j) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(k) No insurer, agent, broker, or other entity may solicit a particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

(l) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event where insurance products will be offered for sale may use the terms "seminar," "class," "informational meeting," or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words "and insurance sales presentation" immediately following those terms in the same type size and font as those terms.

365:25-17-11. Visit in senior's home

(a) This section applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to persons age 65 years of age or older, or prospective insureds by any person.

(b) Any person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours prior to that individual's initial meeting in the senior's home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be in substantially the following form, with the appropriate information inserted, in 14-point type:

(1) "During this visit or a follow-up visit, you will be given a sales presentation on the following (indicate all that apply): ( ) Life insurance, including annuities ( ) Other insurance products (specify): _____."

(2) "You have the right to have other persons present at the meeting, including family members, financial advisors or attorneys."

(3) "You have the right to end the meeting at any time."

(4) "You have the right to contact the Department of Insurance for information, or to file a complaint. (The notice shall include the consumer assistance telephone numbers at the department)"

(5) "The following individuals will be coming to your home: (list all attendees, and insurance license information, if applicable)."

(c) Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about insurance, or to gather information for a follow-up visit to sell insurance, if that is the case, and state all of the following information:

(1) The name and titles of all persons arriving at the senior's home.

(2) The name of the insurer represented by the person, if known.

(d) Each person attending a meeting with a senior shall provide the senior with a business card or other written identification stating the person's name, business address, telephone number, and any insurance license number.

(e) The persons attending a meeting with a senior shall end all discussions and leave the home of the senior immediately after being asked to leave by the senior.

(f) A person may not solicit a sale or order for the sale of an annuity or life insurance policy at the residence of a senior, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.

[OAR Docket #05-827; filed 5-10-05]

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

[OAR Docket #05-773]

RULEMAKING ACTION:
EMERGENCY adoption
RULE:
Subchapter 5. Area Restrictions and Special Fees
800:10-5-3. Designated trout areas [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103; 5-401and 4-140 (D); Title 4 O.S. and Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Adoption:
March 7, 2005
Effective:
Upon Governor Approval
Approved by Governor:
March 23, 2005
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATION BY REFERENCE:
n/a
FINDING OF EMERGENCY:
A finding of an emergency is necessary because of public discontent with the current rule requiring a trout license to fish in a portion of the Mountain Fork River where bass fishing is viewed as more common than trout fishing. This public discontent has manifested itself into proposed legislative action. This action, if passed, would cause considerable loss in revenue to the ODWC

and jeopardize the future of the trout program if not resolved this legislative session through this rule amendment.

ANALYSIS:

The rules changes are needed to exclude a portion of the Mountain Fork River designated trout area from trout license requirements. However, certain rules regarding possession of trout and fishing restrictions would be retained while fishing in this area.

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 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the reregulation dam. However, while fishing in this portion of the Mountain Fork River, a valid annual trout license is required to have trout in possession. ~~trout~~Trout season is year-round.

(5) The North Fork of the Red River from Altus-Lugert Dam downstream to the low water dam at State Highway 44A, trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter ($1\frac{1}{4}$) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Lake Pawhuska trout season is from November 1 through March 31 of the following year; season is annual.

(b) **Trout license requirement.** It shall be unlawful for any person, regardless of residency, age or disability, to fish in "Designated Trout Areas" during trout seasons without having secured from the Department of Wildlife Conservation or its authorized agent, a special, annual trout license. The special trout license shall be in addition to the regular fishing license requirements. The special trout license requirement shall apply only during the November 1 through March 31 special trout season on the Blue River, annually on the Illinois River and Mountain Fork River, from November 1 through March 31 on Lake Watonga, from November 1 through March 15 below Altus-Lugert Dam, from November 1 through April 30 on Lake Carl Etling, from November 1 through March 15 in the Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary, and from November 1 through March 31 on Lake Pawhuska. All persons possessing trout caught downstream of the Robbers Cave State Park boundary or in tributaries to the designated trout stream are also required to have a trout license during the season; no exceptions.

(c) **General; area restrictions.** The following rules apply to designated trout areas and that portion of the Mountain Fork River from the mouth of Rough Branch Creek downstream to the reregulation dam:

(1) It shall be unlawful to take or attempt to take fish from ~~"Designated Trout Areas"~~ these areas during trout seasons except with rod and reel or pole and line; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Fishing in the Mountain Fork River below Broken Bow dam from the old Park dam downstream to the reregulation dam is restricted to artificial flies and lures only and barbless hooks only.

[OAR Docket #05-773; filed 5-4-05]

Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption" of the proposed new, amended, or revoked rules. "Final adoption" occurs upon approval by the Governor and the Legislature, or upon enactment of a joint resolution of approval by the Legislature. Before proposed permanent rules can be reviewed and approved/disapproved by the Governor and the Legislature, the agency must provide the public an opportunity for input by publishing a Notice of Rulemaking Intent in the *Register.*

Permanent rules are effective ten days after publication in the *Register*, or on a later date specified by the agency in the preamble of the permanent rule document.

Permanent rules are published in the *Oklahoma Administrative Code*, along with a source note entry that references the *Register* publication of the permanent action.

For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 303.2, 308 and 308.1.

TITLE 195. BOARD OF DENTISTRY CHAPTER 10. EXAMINATION AND LICENSING OF DENTISTS, DENTAL HYGIENISTS, AND DENTAL SPECIALISTS

[OAR Docket #05-721]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 1. Examination for Dentists
195:10-1-2. Eligibility to take examination and application procedure [AMENDED]
AUTHORITY:
Title 59 O.S. Supp. 1996, Section 328.15(A), Board of Dentistry
DATES:
Comment Period:
January 11, 2005 to February 10, 2005
Public hearing:
February 11, 2005
Adoption:
February 18, 2005
Submitted to Governor:
February 24, 2005
Submitted to House:
February 24, 2005
Submitted to Senate:
February 24, 2005
Gubernatorial approval:
April 8, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2005.
Final adoption:
April 21, 2005
Effective:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
New rules provide time limit for applicants to complete theoretical and practical examinations. The rule will facilitate protection of the public by ensuring minimum standards for all dental applicants.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. EXAMINATION FOR DENTISTS

195:10-1-2. Eligibility to take examination and application procedure

All persons desiring to practice dentistry in the State of Oklahoma shall be required to pass satisfactorily an examination before receiving a license. An applicant, to be acceptable for examination for a license to practice dentistry in Oklahoma, must fulfill the following requirements:

(1) Make application to the Board in writing. Forms are available upon request, from the Office of the Board.

(2) Be twenty-one years of age or over.

(3) Return the completed application, at least thirty (30) days prior to the announced dates for the examination. The application must be accompanied by a certified check or United States Postal Money Order to pay the examination fee as required by the Board ~~of Governors~~, but not to exceed Two Hundred Dollars ($200).

(4) No application will be accepted less than thirty (30) days prior to the announced dates for the examination.

(5) After the application has been processed and the applicant has been notified to appear before the Board for examination, and should the applicant fail to appear for the examination, his or her file and fee will be considered forfeited. Should the applicant file for a subsequent examination, such applicant will be considered a new applicant, and the fee for such examination will be as for other new applicants. A new application must be submitted each time an applicant expresses a desire to be examined.

(6) If the applicant has not completed his or her last term in Dental School prior to making application, the Dean of the School should certify that he or she is a candidate for graduation, in order that the application can be processed. No applicant will be allowed to take the examination until the Secretary of the Board has in possession a photostatic copy of the applicant's diploma.

(7) Applicants who are licensed and practicing dentistry in another state must present with the application a photostatic copy of his or her degree and a statement or certificate signed by the Secretary of the State Dental Board of the state in which he or she is licensed that the applicant is engaged in the actual, lawful, practice of dentistry.

(8) The Board recognizes only those applicants who are students or graduates of Dental Schools in the United

States or Canada, approved, conditionally, or provisionally approved by the Commission on Dental Accreditation of the American Dental Association, and the applicant must have or will receive a D.D.S. or D.M.D. Degree from that school.

(9) Applicant must attach a recent passport type photograph of self in place so designated on application blank.

(10) Applicant must present with application, a (official) transcript of his or her grades received during his or her academic years of training in dental school.

(11) Applicants shall be required to successfully complete Part I and Part II of the National Board (written theoretical) examination. Part I of the National Board examination shall be required prior to graduation from an accredited dental program. All dental applicants shall be required to complete Part II of the National Board examination within twenty-four (24) months of their date of graduation from an accredited dental program.

(~~11~~12) Applicant will appear for personal interview, as requested by the Board.

(~~12~~13) Applicants qualifying for a~~n~~ regional examination ~~formulated~~ recognized ~~and administered~~ by the Board who fail to make the required grade will not be issued a license, but may retake the examination specified in 59 O.S. Section 328.21 (F). The additional examinations will require a fee as set by the Board.

(~~13~~14) Should an applicant fail the second clinical examination before further re-examination the Board may require evidence of additional education. After the third examination, the Board may deny the applicant further examination. Clinical examinations are recognized for a period of five-years.

(~~14~~15) If the applicant successfully passes the examination and is licensed to practice dentistry in Oklahoma, he or she will be required to pay an annual registration fee each year, or his or her license will be cancelled as provided by law.

(~~15~~16) A copy of the State Dental Act of Oklahoma and Rules and Regulations promulgated by the Board will be mailed to applicant with letter of notification ~~to appear for the Oklahoma examination~~ acknowledging receipt of application.

(~~16~~17) Applicants must show proof of malpractice insurance pertaining to acts performed at, during or for the clinical examination.

(~~17~~18) Applicants must furnish their own patients, instruments, and materials.

(~~18~~19) Address communications to the current address of the BOARD OF DENTISTRY ~~Oklahoma City, Oklahoma~~ office.

[OAR Docket #05-721; filed 4-26-05]

TITLE 195. BOARD OF DENTISTRY CHAPTER 15. DUTIES FOR DENTAL ASSISTANTS AND THE RULES REGULATING THE PRACTICE OF DENTAL HYGIENE

[OAR Docket #05-722]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
195:15-1-1.1. Definitions [AMENDED]
195:15-1-4. Expanded duty permits for dental assistants; fees [AMENDED]
195:15-1-5. Duties not assignable to dental assistants [AMENDED]
195:15-1-10. Dental Hygiene Advisory Committee [NEW]
AUTHORITY:
Title 59 O.S. Supp. 1996, Section 328.15(A), Board of Dentistry
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Comment Period:
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Public hearing:
February 11, 2005
Adoption:
February 18, 2005
Submitted to Governor:
February 24, 2005
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February 24, 2005
Gubernatorial approval:
April 8, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2005.
Final adoption:
April 21, 2005
Effective:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
New rules provide amendments to address dental assistants and the expanded duty criteria. 195:15-1-10 creates new rules to establish a Dental Hygiene Advisory Committee recognizing composition and functions.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

195:15-1-1.1. Definitions

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

"Advanced procedure" means a dental procedure for which a dental hygienist has received special training in a course of study approved by the Board.

"Dental hygiene" means the science and practice of the promotion of oral health and prevention and treatment of oral

disease through the provision of educational, therapeutic, clinical and preventive services.

"Direct supervision" ~~means the supervisory dentist is in the dental office, has personally diagnosed the condition to be treated, personally authorizes the procedures, remains in the dental office while the procedures are being performed by the dental hygienist or dental assistant and, before dismissal of the patient, evaluates the progress of the dental treatment.~~ is defined by Title 59 O.S. Section 328.3 (State Dental Act).

"Expanded duty" means a dental procedure for which a dental assistant has received special training in a course of study approved by the Board.

"General supervision" ~~means the supervisory dentist has previously diagnosed the condition to be treated, personally authorizes the procedures, and will evaluate the progress of the dental treatment within a reasonable time as determined by the nature of the procedures performed, the needs of the patient, and the professional judgment of the supervisory dentist. Authorization for general supervision is at the discretion of the supervisory dentist and limited to a maximum of thirteen (13) months following an examination by the supervisory dentist of a patient of record.~~ is defined by Title 59 O.S. Section 328.3 (State Dental Act).

"Indirect supervision" ~~means the supervisory dentist is in the dental office, has personally diagnosed the condition to be treated, personally authorizes the procedures, remains in the dental office while the procedures are being performed by the dental hygienist, and will evaluate the progress of the dental treatment within a reasonable time as determined by the nature of the procedures performed, the needs of the patient, and the professional judgment of the supervisory dentist.~~ is defined by Title 59 O.S. Section 328.3 (State Dental Act).

"Patient" or **"patient of record"** means an individual who has given a medical history, and has been examined and accepted for dental care by a dentist.

"Supervision" means direct supervision, indirect supervision, or general supervision.

195:15-1-4. Expanded duty permits for dental assistants; fees

(a) It is the determination of the Board that certain duties may be performed by a dental assistant who has satisfactorily completed a course of study regarding the performance of such duties. Applicants who successfully complete recognized expanded duty training at a formal dental assisting program approved by the Board and the Commission on Dental Accreditation of the American Dental Association shall be eligible for permits. Pursuant to paragraph 9 of subsection B of 59 O.S., Section 328.15, the Board hereby establishes four (4) expanded duty permits for dental assistants with definitions, requirements, and course guidelines as follows:

(1) Radiation Safety.

(A) Definition: A dental assistant holding this expanded duty permit may expose intra-oral and extraoral radiographs.

(B) Requirement: Satisfactory completion of a course of study in radiation safety and protection, consisting of a minimum of seven (7) hours, approved by the Board. After satisfactory completion of the course of study, each applicant shall submit written verification from the applicant's current employing dentist attesting to competent clinical experience. All applications shall contain both signatures of the employing dentist and the student.

(C) Course Guidelines:

(i) Minimum standards for courses to train dental assistants to expose intra-oral and extraoral radiographs are as follows:

(I) The instruction level shall meet level 4 of the Board's Guide to Curriculum Development for Expanded Duties.

(II) Courses shall be taught by licensed dentists, licensed dental hygienists or dental assistants who have been issued expanded duty permits in radiation safety by the Board. Further, instructors shall have a minimum of one year of experience exposing radiographs.

(III) The course shall be a minimum of seven (7) hours in length for the instructional portion.

(IV) Expanded duty permits will require a clinical portion in which each student shall complete ~~at least ten (10) full mouth surveys, of which no more than five (5) shall be panoramic and bite wings, or a combination of 200 radiographs of any type certified by employing dentist.~~ 200 radiographs, no more than five can be panoramic, as certified by employing dentist.

(ii) The course shall be designed and conducted to provide each student with a thorough knowledge about the exposure of radiographs. Upon completion of the course, students shall be able to apply this knowledge to expose radiographs safely as instructed.

(iii) The instruction portion of the course shall include instruction in:

(I) Radiation physics;

(II) Radiation biology;

(III) Radiation health, safety and protection;

(IV) Radiographic films and film quality;

(V) Principles of radiographic techniques;

(VI) Darkroom and processing techniques;

(VII) Film mounting.

(iv) Students shall be provided a course outline setting forth materials to be presented in the course and evaluation criteria established by the course provider for the course.

(v) At one point during the course and upon completion of the class, students shall be evaluated by the course presenters by written examination. The examination shall cover the didactic portion of the course. Each student's written examinations shall be maintained by the course provider for a

minimum period of one (1) year following completion of the examination. Each course provider shall, prior to beginning a course, allow a member of the Board or its designee to review the examination. The passing grade is set at 70%.

(vi) Each course provider shall, within thirty (30) days after completion of a course, submit to the Board a list of the names of each of the students at the course and each student's final grade in the course.

(vii) The course provider shall create and maintain records on each student, including test score for a one (1) year period. The director of the educational portion of the program shall sign a statement in the scholastic record attesting to the student's proficiency in the expanded duty.

(viii) Courses offered pursuant to this rule are subject to unannounced audits by the Board. Any Board member or designee of the Board shall be provided full access to course materials or the classroom or clinic during instruction. Failure to provide access pursuant to this provision may subject the provider to invalidation of course results.

(2) Coronal Polishing/Topical Fluoride.

(A) Definition: A dental assistant holding this expanded duty permit may:

(i) polish coronal surfaces of teeth, or prepare teeth for band cementation or bonding of brackets utilizing a slow speed rotary hand piece and rubber cup or brush (examination for calculus and scaling must be done by a dentist or dental hygienist), and

(ii) apply topical fluoride and desensitizing agents.

(B) Requirement: Satisfactory completion of a course of study, including a clinical component, in coronal polishing and the application of topical fluoride and desensitizing agents, consisting of a minimum of fourteen (14) hours, approved by the Board.

(C) Course Guidelines:

(i) For the purposes of this section, training necessary to prepare teeth for band cementation is accomplished by proper training in coronal polishing, as set forth in this section. Training for coronal polishing and applying topical fluoride and desensitizing agents shall be undertaken only in a single course which complies with all provisions of this section. Minimum standards for courses to train dental assistants to perform coronal polishing or to apply topical fluoride or desensitizing agents are as follows:

(I) The course shall be open only to applicants with a minimum of one year of active chair side experience as a dental assistant, of which no less than six (6) months shall be in any one practice.

(II) The instruction level shall meet level 4 of the Board's Guide to Curriculum Development.

(III) The course shall be taught by licensed dentists, licensed dental hygienists or dental assistants who have been issued expanded duty permits in coronal polishing/topical fluoride or preparing teeth for band cementation by the Board. Dental assistants shall not conduct didactic portions of the class, but may undertake clinical training or evaluation.

(IV) The course shall be a minimum of fourteen (14) hours in length for the instructional portion.

(ii) The course shall be designed and conducted to provide each student the ability to manipulate polishing instruments correctly and remove all plaque and extrinsic stains that do not require scaling from the exposed surfaces of teeth without trauma to the teeth or gingiva. The course shall further provide each student with necessary knowledge about currently accepted topical fluoride and desensitizing agents and the ability to apply such fluoride agents to accomplish caries prevention.

(iii) The didactic portion of the course shall include instruction in:

(I) Principles of plaque and stain formation;

(II) The clinical appearance of plaque, intrinsic and extrinsic stains and calculus (removal of calculus and scaleable stains shall be accomplished only by a dentist or dental hygienist);

(III) The clinical appearance of clean and polished teeth;

(IV) Tooth morphology and the anatomy of the oral cavity as they relate to the retention of plaque, stain and polishing techniques;

(V) Principles of selecting abrasives and polishing agents and their effect on tooth structure and restorative materials;

(VI) Principles of polishing, including the selection and care of the armamentarium, instrumentation techniques and precautions, including the care of the mouth with fixed or removable prostheses and/or orthodontic appliances;

(VII) Principles of aseptic technique, including the sterilization of instruments, sanitation of equipment, and control of disease transmission;

(VIII) Principles of selecting and applying disclosing agents, including armamentarium, technique and precautions;

(IX) Principles of the preparation of teeth and the oral cavity for fluoride application;

(X) The reaction of fluorides with tooth structure;

(XI) Available fluoride agents;

(XII) Principles of the preparation and storage of fluoride agents;

(XIII) Principles of application techniques, including the selection and care of armamentarium, the isolation of teeth, adaptation of trays, techniques and precautions.

(iv) The clinical portion of the course shall include hands on experience in:

(I) Identifying calculus, plaque, and intrinsic and extrinsic stains;

(II) Polishing exposed surfaces of teeth;

(III) Applying disclosing agents to the exposed surface of teeth;

(IV) Evaluating the extent of plaque and stain removal;

(V) Maintaining the polishing armamentarium;

(VI) Maintaining aseptic techniques;

(VII) Applying various fluoride agents;

(VIII) Applying various desensitizing agents.

(v) Students shall be provided a course outline setting forth materials to be presented in the course and evaluation criteria by the course provider for the course.

(vi) The course shall include jurisprudence aspects, as follow:

(I) Legal limitations of dental assistants;

(II) Limitations on assistant services;

(III) Penalties for violation of the State Dental Act or rules of the Board;

(IV) Mechanisms by which a person can report violations of the State Dental Act or rules of the Board to the Board.

(vii) The course provider shall conduct clinical experience of at least two (2) hours, including at least a one-half hour demonstration by an instructor. The clinical experience shall include all significant portions of the didactic instruction. Student/Faculty ratio shall be no greater than 1-6 on all clinical requirements.

(viii) Upon completion of the course, students shall be evaluated by written examination. The examination shall cover the didactic portion of the course. The passing grade is set at 70%. A student who fails the examination may retake the examination no more than two (2) times. In the event a student takes the examination three (3) times and fails each time, the student shall not sit for the examination for a period of one (1) year. At that time, the student may retake the course and retake the examination pursuant to this rule. Results of the examination shall be retained by the course provider for a minimum period of one (1) year following successful completion of the examination. Each course provider shall, prior to beginning a course, allow a member of the Board or its designee to review the examinations.

(ix) Each course provider shall, within thirty (30) days after completion of a course, submit to the Board a list of the names of each of the students at the course and each student's final grade in the course.

(x) The course provider shall create and maintain records on each student, including test score of clinical testing, in the clinical test for a one (1) year period. The director of the educational portion of the program shall sign a statement in the scholastic record attesting to the student's proficiency in the expanded duty.

(xi) Courses offered pursuant to this section are subject to unannounced audits by the Board. Any Board member or designee shall be provided full access to course materials or the classroom or clinic during instruction. Failure to provide access may subject the course provider to invalidation of course results.

(3) Sealants.

(A) Definition: A dental assistant holding this expanded duty permit may place pit and fissure sealants.

(B) Requirement: Satisfactory completion of a course of study in the placement of pit and fissure sealants, consisting of a minimum of twelve (12) hours, approved by the Board. A dental assistant must hold a current expanded duty permit in Coronal Polishing/Topical Fluoride prior to enrolling in a course of study in the placement of pit and fissure sealants.

(C) Course Guidelines:

(i) Minimum standards to train dental assistants in the placement of pit and fissures sealants are as follows

(I) The instruction level shall meet level 4 of the Board's Guide to Curriculum Development for Expanded Duties.

(II) Courses shall be taught by licensed dentists or dental hygienists. Instructors shall have a minimum of one year clinical experience in the placement of pit and fissure sealants.

(III) The course shall be a minimum of twelve (12) hours in length.

(IV) Expanded duty permits will require a clinical portion in which each student shall complete pit and fissure sealants on at least four teeth on at least one patient.

(V) Each applicant who completes the clinical portion will be required to submit verification from employing dentist that he/she has completed eight additional sealants on patients under the direct supervision in a dental office. Verification shall be submitted within one year of completion of the course.

(VI) Applicants shall have a minimum of one year clinical experience as a dental assistant.

(ii) The Course shall be designed to provide the student with a thorough knowledge of placement of pit and fissure sealants.

(iii) The didactic portion of the course shall include instruction in

(I) Indication/contraindications for sealants;

(II) Preparation of teeth for sealants;

(III) Proper isolation of teeth for sealants;

(IV) Education of patient and/or parent regarding sealants;

(V) Dental materials;

(VI) Infection control;

(VII) Tooth anatomy; and

(VIII) Armamentarium;

(iv) The clinical portion of the course shall include:

(I) Patient assessment;

(II) Proper tooth isolation and preparation for sealants;

(III) Infection control;

(IV) Evaluation of proper technique in the placement of sealants;

(V) Evaluation by instructors of completed sealants; and

(VI) Patient education;

(v) The clinical experience shall be at least five (5) hours, including a one (1) hour demonstration by an instructor. The clinical experience shall include all applicable portions of the didactic instruction. Each student shall complete eight sealants on eight additional teeth. Student/faculty ratio shall be no greater than 1-6 on all clinical requirements.

(vi) Upon completion of the course, students shall be evaluated by written examination. The passing grade is set at 70%. A student who fails the examination may retake the examination no more than two (2) times. In the event a student takes the examination three (3) times and fails, the student shall not sit for the examination again for at least one (1) year. At that time the student may retake the course and retake the examination pursuant to this rule.

(vii) Each course provider shall, within thirty (30) days after completion of a course, submit to the Board a list of the names of each student attending the course and each student's final grades.

(viii) The course provider shall create and maintain records on each student, including all test scores for one (1) year. The director of the educational program shall sign a statement in the scholastic record attesting to the student's proficiency in the expanded duty.

(ix) Courses offered pursuant to this section are subject to unannounced audits by the Board. Any Board member or designee shall be provided full access to course materials or the classroom or clinic during instruction. Failure to provide access may subject the course provider to invalidation of course results.

(4) Nitrous Oxide.

(A) Definition: A dental assistant holding this expanded duty permit may assist a dentist or a dental hygienist who holds an advanced procedure permit in the administration of nitrous oxide.

(B) Requirement: Satisfactory completion of a course of study in nitrous oxide administration, consisting of a minimum of twelve (12) hours, approved by the Board.

(C) Course Guidelines:

(i) The courses shall be open only to applicants with a minimum of one (1) year of active experience as a dental assistant.

(ii) The instruction shall meet level 3 of the Board's Guide to Curriculum Development.

(iii) The course shall be taught by licensed dentists or licensed dental hygienists with a minimum of one (1) year experience in teaching advanced education in comprehensive pain and anxiety control and with one (1) year of clinical experience in nitrous oxide administration.

(iv) The minimum course length shall be twelve (12) hours.

(v) The ratio of faculty to student shall be no greater than 1 to 10.

(vi) The course shall be designed and conducted to provide the student with detailed knowledge of nitrous oxide oxygen inhalation sedation and its use in dentistry. Upon successful completion of the course, the student shall be trained to assist in the administration of nitrous oxide in an office setting safely and as needed.

(vii) The didactic portion of the course shall include:

(I) The history, philosophy and psychology of nitrous oxide-oxygen inhalation sedation;

(II) Definition and descriptions of the physiological and psychological aspects of pain and anxiety;

(III) A description of the stages of drug induced central nervous system depression through all levels of consciousness and unconsciousness, with special emphasis on the distinction between the conscious and unconscious state;

(IV) The anatomy and physiology of respiration;

(V) The pharmacological and physiological effects of nitrous oxide for analgesia and sedation, including physical properties, action, side effects, absorption, excretion and toxicity;

(VI) The advantages and disadvantages of inhalation sedation with nitrous oxide;

(VII) The management of reaction to, or complications of nitrous oxide;

(VIII) Matters regarding patient status assessment, including:

a. Taking and reviewing a thorough health history, including vital signs;

b. Implications of health history problems related to sedation;

c. Indications and contra-indications of conscious sedation;

(IX) The description and use of inhalation sedation equipment;

(X) Introduction of nitrous oxide to the patient;

(XI) Precautions for the successful introduction of nitrous oxide to the patient;

(XII) Dosages and needs of the patient;

(XIII) Patient monitoring, specifically to include vital signs and reflexes related to consciousness;

(XIV) Possible reaction to nitrous oxide;

(XV) Return of the patient to pre-sedation status and instructions for post-operative care;

(XVI) Hazards of nitrous oxide to the patient and operator;

(XVII) The recognition, prevention and management of complications and life threatening situations related to nitrous oxide;

(XVIII) Legal considerations of nitrous oxide; and

(XIX) The introduction to potential health hazards of trace anesthetics and proposed techniques for the elimination thereof.

(viii) The clinical portion of the course shall include:

(I) Patient status assessment;

(II) Use of various nitrous oxide machines;

(III) Introduction of nitrous oxide to the patient;

(IV) Monitoring of the patient;

(V) Return of the patient to pre-sedation status;

(VI) Post-operative care of the patient and provision of instructions to the patient; and

(VII) C.P.R.

(ix) The clinical experience shall be at least two (2) hours, including at least a one-half hour demonstration by an instructor. The clinical experience shall include all significant portions of the didactic instruction. When not medically inappropriate, each student shall be afforded the opportunity to experience the effects of nitrous oxide. Student/faculty ratio shall be no greater than 1-10 on all clinical requirements.

(x) Upon completion of the course, students shall be evaluated by written examination. The examination shall cover the didactic portion of the course. The passing grade is set at 70%. A student who fails the examination may retake the examination no more than two (2) times. In the event a student takes the examination three (3) times and fails each time, the student shall not sit for the examination for a period of one (1) year. At that time, the student may retake the course and retake the examination pursuant to this rule. Results of the examination shall be retained by the course provider for a minimum period of one (1) year following successful completion of the examination. Each course provider shall, prior to beginning a class, allow a member of the Board or its designee to review the examinations.

(xi) Each course provider shall, within thirty (30) days after completion of a course, submit to the Board a list of the names of each of the students at the course and each student's final grade in the course.

(xii) The course provider shall create and maintain records on each student, including test score of clinical testing, in the clinical test for a one (1) year period. The director of the educational portion of the program shall sign a statement in the scholastic record attesting to the student's proficiency in the expanded duty.

(b) An application by a dental assistant for an expanded duty permit shall be made on a form prescribed by the Board, which shall be accompanied by the fee set forth in 195: 2-1-7.

(c) Except as provided in (e), an expanded duty permit shall be automatically revoked if the holder thereof fails to secure an annual renewal of the permit within three (3) months from the 31st day of December of each year.

(d) The expanded duties specified in (a) may be performed by a dental assistant only on a patient of record and only under the direct supervision of a dentist.

(e) Expanded duty permits for Radiation Safety need not be renewed.

(f) Dental assistants performing expanded duties shall prominently display the expanded duty permit at their place of employment.

(g) All students who successfully complete expanded duty courses shall have one (1) year to secure a permit. Failure to submit an application within one (1) year from the date of the course shall result in the student being denied a permit and required to retake the approved expanded duty course.

(h) All expanded duty permit holders shall provide proof of current CPR provided by the American Heart Association/Health Care Provider Level or the American Red Cross/Professional Rescuer.

195:15-1-5. Duties not assignable to dental assistants

A dentist shall not delegate to a dental assistant, nor shall a dental assistant perform, any of the following procedures and duties:

(1) Diagnosis;

(2) Treatment planning;

(3) Prescription of medications;

(4) Final placement or removal of orthodontic brackets and bands;

(5) Removal of fully hardened cement;

(6) Surgery or the cutting or severance of hard and soft tissue;

(7) Placement or adjustment of any removable or fixed prosthesis;
(8) Placement or removal of restorative materials in a human oral cavity;
(9) Administration of injectable local anesthesia;
(10) Utilization of a laser;
(11) Administration of nitrous oxide ~~except for those dental assistants who hold a current expanded duty permit issued by the Board to assist in the administration;~~
~~(11) Administration of general anesthesia;~~
(12) Any procedure that may contribute to or result in an irreversible alteration of the human oral anatomy;
(13) An expanded duty as set forth in 195:15-1-4, when the dental assistant does not hold a current permit issued by the Board for the expanded duty; and
(14) Those procedures allocated exclusively to dental hygienists by 195:15-1-6 or the State Dental Act.

195:15-1-10. Dental Hygiene Advisory Committee

(a) A Dental Hygiene Advisory Committee is hereby established to advise the Board of Dentistry on matters relating to dental hygiene. This committee shall have the following functions:
(1) Develop and propose recommendations to the Board regarding the education, examination, licensure, and regulation of dental hygienists.
(2) Advise the Board in rulemaking regarding dental hygiene.
(3) Hold meetings at least annually or no more than quarterly.
(b) The Dental Hygiene Advisory Committee shall be composed of members as follows:
(1) The one (1) current dental hygiene member of the Board.
(2) Four (4) dental hygienists at large.
(c) Members of this committee shall be appointed by the Board and serve a term of three-years. Appointments shall be made so that approximately one-third of the committee is re-appointed at any given time.

[OAR Docket #05-722; filed 4-26-05]

TITLE 195. BOARD OF DENTISTRY CHAPTER 20. RULES GOVERNING THE ADMINISTRATION OF ANESTHESIA

[OAR Docket #05-723]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
195:20-1-8. Minimal standards for dentists utilizing conscious sedation by parenteral methods [AMENDED]
195:20-1-9. Minimal standards for dentists utilizing general anesthesia or deep sedation [AMENDED]
195:20-1-14. Anesthesia Advisory Committee [AMENDED]
AUTHORITY:
Title 59 O.S. Supp. 1996, Section 328.15(A), Board of Dentistry
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ANALYSIS:
New rules provide amendments by deleting requirement for pre cordial stethoscope and recommend defibrillator per ACLS protocal. Composition of Anesthesia Advisory Committee amended.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

195:20-1-8. Minimal standards for dentists utilizing conscious sedation by parenteral methods

(a) Every dentist who utilizes conscious sedation by parenteral methods shall be responsible for all aspects of the procedure as outlined in Part I, Section V of the American Dental Association Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists. This shall include careful patient evaluation and informed consent prior to the start of any sedation procedure. Continuous monitoring of oxygenation, ventilation, and circulation with documentation of all procedures, drugs, and agents on an appropriate time-oriented anesthesia record shall be completed for each patient. The dentist performing the sedation is required to be in the patient's presence at all times during the procedure. No provider shall have more than one (1) patient under any form of sedation at the same time, exclusive of recovery. Supervised recovery and complete evaluation of the patient prior to discharge to a responsible adult is required. Minimal monitoring equipment shall include **blood pressure apparatus** (manual or automatic) **pulse oximeter**, and **electrocardiograph** (adult patients) ~~and **pre-cordial stethoscope.**~~ A defibrillator is recommended per ACLS protocol.
(b) The anesthesia permit provider is responsible for the anesthetic management, adequacy of the facility, and treatment of emergencies associated with administration of parenteral

conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

195:20-1-9. Minimal standards for dentists utilizing general anesthesia or deep sedation

(a) Every dentist who utilizes general anesthesia or deep sedation shall be responsible for all aspects of the procedure as outlined in Part I, Section V in the American Dental Association Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for dentists and/or the American Association of Oral and Maxillofacial Surgeon's "Office Anesthesia Evaluation Manual." This shall include careful patient evaluation and informed consent prior to the start of any anesthetic procedure. Continuous monitoring of oxygenation, ventilation, and circulation with documentation of all procedures, drugs, and agents on an appropriate time-oriented anesthesia record shall be completed for each patient. A device capable of measuring body temperature should be readily available, if needed, during the administration of deep sedation/general anesthesia. When agents implicated in precipitating malignant hyperthermia are utilized, continual monitoring of body temperature must be performed. The dentist performing the anesthesia is required to be in the patient's presence at all times during the procedure. No provider shall have more than one patient under any form of sedation or anesthesia at the same time, exclusive of recovery. Supervised recovery and complete evaluation of the patient prior to discharge to a responsible adult is required. Minimal monitoring equipment shall include **blood pressure apparatus** (manual or automatic), **pulse oximeter**, **end-tidal carbon dioxide monitor** (intubated patients), **~~pre-cordial stethoscope~~, temperature monitor, electrocardiograph**, and a **defibrillator.**

(b) The anesthesia permit provider is responsible for the anesthetic management, adequacy of the facility, and treatment of emergencies associated with the administration of general anesthesia, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

195:20-1-14. Anesthesia Advisory Committee

(a) An Anesthesia advisory Committee shall be formed to advise the Board concerning the administration of anesthesia and sedation. This Committee shall have the following functions:

(1) Advise the Board in rulemaking regarding anesthesia and sedation;

(2) Submit names of dentists to the Board for its consideration in appointing provider permit and facility inspectors;

(3) Formulate and revise checklists for provider permits and facility inspections for the Board's consideration;

(4) Hold meetings at least annually and no more than quarterly.

(b) The Anesthesia Advisory Committee shall be composed of:

(1) ~~Two (2)~~ One (1) dentist~~s~~ who holds a general anesthesia provider permit~~s~~;

(2) ~~Two (2)~~ One (1) dentist~~s~~ who holds a conscious sedation provider permit~~s~~;

(3) One (1) dentist provider permit holder at large;

(4) One (1) current dentist member of the Board;

(5) One (1) dentist who holds a pediatric conscious sedation provider permit.

(c) Members of this committee shall be appointed by the Board and serve a term of three years. Appointments shall be made so that approximately one-third of the committee is re-appointed each year.

[OAR Docket #05-723; filed 4-26-05]

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

[OAR Docket #05-801]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:4-1-5. [AMENDED]
252:4-1-6. [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. §§ 2-2-101; Schedule of Fees, 27A O.S. § 2-3-402(B); Executive Director powers and duties, 27A O.S. § 2-3-201(C)(3); Copying and/or mechanical reproduction of records, 51 O.S. § 24A.5(3)
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None
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None
ANALYSIS:
The Department proposes to amend language in OAC 252:4-1-5 and 4-1-6 in order to provide greater security and file integrity for agency records and to cover some of the costs of materials when the Department responds to open records requests. Specifically, the amendments relate to restrictions on

removal of files from the DEQ offices and to recovery of DEQ costs for faxing, mailing, delivery service, and copying of CDs.

CONTACT PERSON:

Martha Penisten at martha.penisten@deq.state.ok.us or (405)702-7189 (phone) or (405)702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, OK 73102. The mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:4-1-5. Availability of a record

(a) **Availability.** Records of the Board, Advisory Councils, and DEQ, not otherwise confidential or privileged from disclosure by law, shall be available to the public for inspection and copying at the DEQ's principal office during normal business hours. Information, data or materials required to be submitted to the DEQ in a permit application process shall be made available to the public in accordance with the Oklahoma Uniform Environmental Permitting Act (27A O.S. § 2-14-101 *et seq.*) and the rules in this Chapter. The DEQ may take reasonable precautions in order to ensure the safety and integrity of records under its care.

(b) **Removal.** A record may be removed from the DEQ's offices or storage areas only with ~~permission~~ prior authorization from and under the supervision of the ~~record's custodian~~ Records Coordinator or his/her designee.

(c) **Reproduction.**

(1) **By DEQ.** The DEQ may limit the number of copies made and the time and personnel available for reproduction of records requested by a member of the public.

(2) **Commercial reproduction.** With advance notice to the DEQ, a person may arrange for the pick-up, reproduction and return of records by a commercial copying service at his/her own expense, only if the Records Coordinator or his/her designee determines that the DEQ's staff or equipment is inadequate to perform all or part of the project.

(3) **Other.** With prior DEQ approval, a person may bring in and use his/her own copy machine.

(d) **Confidentiality.** Any person asserting a claim of confidentiality for any document submitted to the Board, Council or DEQ must substantiate the claim upon submission. The DEQ will make a determination on the claim and notify the person asserting the claim within a reasonable time. Each program may have more specific requirements, as required by state law or federal rule. [See 27A O.S. § 2-5-105(18) and 40 CFR § 2 Subpart B, particularly § 2.301 (Clean Air Act), § 2.302 (Clean Water Act), § 2.304 (Safe Drinking Water Act), § 2.305 (Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act), and § 2.310 (Comprehensive Environmental Response, Compensation, and Liability Act, as amended by Superfund Amendments and Reauthorization Act)].

(e) **Certification.** Copies of official records of the Board, Advisory Councils or DEQ may be certified by the Executive Director or his/her designees.

(f) **Charge.** The DEQ's administrative fee schedule applies to in-house copying or reproduction of records for or by members of the public.

252:4-1-6. Administrative fees

(a) **Photocopying and faxing.** The fee for copying or faxing letter or legal sized paper is $0.25 per page after the first ten pages.

(b) **Certified copy.** The fee for a certified copy of a document is $1.00 per document.

(c) **Search fee.** When the request is solely for commercial purpose or clearly would cause excessive disruption of the DEQ's essential functions, the document search fee is as follows:

(1) 0 - 15 minutes, no charge;

(2) 16 - 30 minutes, $5.00;

(3) every subsequent 30-minute increment or portion thereof, $5.00.

(d) **Regular mail or overnight carrier.** The fee for mailing eleven or more sheets of reproduced DEQ records by regular mail is the cost of postage. The fee for sending a package of reproduced DEQ records by overnight carrier is the cost of delivery.

(e) **Compact Disc.** If the DEQ provides the compact disc ("CD"), the fee for copying from CD to CD or from database to CD is $1.00 per CD, plus an additional $1.00 per CD for ink-jet labeling.

[OAR Docket #05-801; filed 5-6-05]

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

[OAR Docket #05-802]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Environmental Permit Process

Part 7. Water Quality Division Tiers and Time Lines

252:4-7-73. [AMENDED]

252:4-7-74. [AMENDED]

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; Water Quality, 27A O.S. § 2-6-101 *et seq.*; and Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 *et seq.*

DATES:

Comment period:

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June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department proposes to update its rules concerning certain water quality permits. The changes clarify certain ambiguous language and add certain permit categories inadvertently omitted, such as pretreatment permits, and all 401 certifications.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

252:4-7-73. Water quality applications - Tier I

The following water quality authorizations require Tier I applications.

(1) Permit for flow-through impoundment(s) as part of the pretreatment process.

(2) ~~Re-permitting of~~ Permit renewal for a facility with an expiring permit for industrial non-discharging impoundment or industrial septic tank system.

(3) ~~Re-permitting of~~ Permit renewal for an expiring permit with minor or no change(s) for land application of sludge and/or wastewater for same site.

(4) New, modified or renewed authorization under a general permit~~, including but not limited to general permits for stormwater, underground storage tanks and petroleum storage and treatment facilities~~.

(5) Approval of new pretreatment program.

(6) Closure plan approval.

(7) ~~Dredge and fill certification.~~ Certifications issued pursuant to Section 401 of the Clean Water Act.

(8) Approval of exemption for water line extensions.

(9) Approval of exemption for water distribution and wastewater collection systems.

(10) Approval for alternative individual on-site sewage ~~disposal~~ treatment systems.

(11) Approval for alternative small public on-site sewage ~~disposal~~ treatment systems.

(12) Residential development approval.

(13) Transfer of discharge permit.

(14) Minor modification of discharge permit.

(15) ~~Minor modification~~ Modification of an individual municipal permit for land application of ~~sludge~~ biosolids and/or wastewater.

(16) Modification of or addition to a municipal wastewater treatment system (including sewer line extensions).

(17) Modification of or addition to a public water supply treatment and/or distribution system (including line extensions).

(18) Modification of industrial non-discharging impoundment and/or industrial septic tank system permit.

(19) Modification of an approved pretreatment program.

(20) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

(21) New, modified or renewed individual categorical or significant industrial user pretreatment permit.

252:4-7-74. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) Permit ~~for~~ to construct a new municipal wastewater treatment, and/or collection system, excluding line extensions.

(2) Permit ~~for~~ to construct a new public water supply treatment and/or distribution system, excluding water line extensions.

(3) ~~Discharge~~ New discharge permit for minor facility.

(4) Individual storm water permit.

(5) ~~Permit~~ New permit for industrial non-discharging impoundment or industrial septic tank.

(6) ~~Permit~~ New individual permit for land application of sludge, biosolids and/or wastewater ~~at new site system~~.

(7) ~~Re-permitting of~~ Permit renewal for a facility with expiring discharge permit.

(8) ~~Re-permitting of~~ Permit renewal for a facility with expiring individual storm water discharge permit.

~~(9) Re-permitting with major change(s) from expiring permit for land application of sludge and/or wastewater for the same site.~~

(~~10~~ 9) Variance including thermal components of effluent limitations for an individual discharge permit.

(~~11~~ 10) Major modification of discharge permit.

(~~12~~ 11) ~~Major modification~~ Modification of an individual industrial permit for land application of sludge and/or wastewater.

(~~13~~ 12) New, modified or renewed general permit.

[OAR Docket #05-802; filed 5-6-05]

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

[OAR Docket #05-803]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Incinerators
Part 9. Commercial and Industrial Solid Waste Incineration Units
252:100-17-63. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S., § 2-5-101, *et seq.*
DATES:
Comment period:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department proposes changes to OAC 252:100-17, Incinerators, in order to comply with the federal requirements for air curtain incinerators. Specifically, the staff requests that OAC 252:100-17-63(j) be changed to reflect that air curtain incinerators are subject to Title V permitting requirements. The added language does not change the interpretation of the rule, but will make clear that air curtain incinerators are subject to the Title V permitting requirements found in OAC 252:100-17-73. When approved, the DEQ will submit the revision to EPA so that Oklahoma's State 111(d) plan may be approved. The change is required for the Department to obtain final approval from EPA for the State 111(d)plan for Commercial and Industrial Solid Waste Incineration units.
CONTACT PERSON:
Lisa Donovan, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 17. INCINERATORS

PART 9. COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS

252:100-17-63. Exemptions

(a) Except as provided in subsections (b) through (p) of this section, each CISWI is subject to the requirements in this Part.

(b) **Pathological waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 are not subject to this Part if the owner or operator meets the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notifies the DEQ that the unit meets these criteria.

(2) Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) **Agricultural waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 are not subject to this Part if the owner or operator meets the two requirements specified in paragraphs (c)(1) and (2) of this section.

(1) Notifies the DEQ that the unit meets these criteria.

(2) Keeps records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) **Municipal waste combustion units.** Incineration units that meet either of the two criteria specified in paragraphs (d)(1) or (2) of this section are not subject to this Part.

(1) Are regulated under Part 5 of this Subchapter or 40 CFR 60, Subpart Ea (Standards of Performance for Municipal Waste Combustors); Subpart Eb (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); or Subpart AAAA (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units).

(2) Burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR 60, Subpart Ea, Subpart Eb, or Subpart AAAA, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the owner or operator meets the two requirements in paragraphs (d)(2)(A) and (B) of this section.

(A) Notifies the DEQ that the unit meets these criteria.

(B) Keeps records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(e) **Medical waste incineration units.** Incineration units regulated under Part 7 of the Subchapter or 40 CFR 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) are not subject to this Part.

(f) **Small power production facilities.** Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section are not subject to this Part.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) The owner or operator notifies the DEQ that the unit meets all of these criteria.

(g) **Cogeneration facilities.** Units that meet the three requirements specified in paragraphs (g)(1) through (3) of this section are not subject to this Part.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) The owner or operator notifies the DEQ that the unit meets all of these criteria.

(h) **Hazardous waste combustion units.** Units that meet either of the two criteria specified in paragraph (h)(1) or (2) of this section are not subject to this Part.

(1) Units for which the owner or operators is required to get a permit under section 3005 of the Solid Waste Disposal Act.

(2) Units regulated under 40 CFR part 63, Subpart EEEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(i) **Materials recovery units.** Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters, are not subject to this Part.

(j) **Air curtain incinerators.** Air curtain incinerators that burn only the materials listed in paragraphs (j)(1) through (3) of this section are only required to meet the requirements under 40 CFR Sections 60.2245 through 60.2260 and the requirements of OAC 252:100-17-73.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(k) **Cyclonic barrel burners.**

(l) **Rack, part, and drum reclamation units.**

(m) **Cement kilns.** Kilns regulated under 40 CFR 63, Subpart LLL, (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) are not subject to this Part.

(n) **Sewage sludge incinerators.** Incineration units regulated under 40 CFR 60, Subpart O (Standards of Performance for Sewage Treatment Plants) are not subject to this Part.

(o) **Chemical recovery units.** Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds are not subject to this Part. The seven types of units described in paragraphs (o)(1) through (7) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(p) **Laboratory analysis units.** Units that burn samples of materials for the purpose of chemical or physical analysis are not subject to this Part.

[OAR Docket #05-803; filed 5-6-05]

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

[OAR Docket #05-804]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
Part 3. Hazardous Air ~~Contaminants~~ Pollutants
252:100-41-15. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., § 2-5-101, *et seq.*
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The following Subparts of 40 CFR Part 63 are incorporated by reference in their entirety as they exist on September 1, 2004:
(1) Subpart A
(2) Subparts F through J
(3) Subparts L through O
(4) Subparts Q through U
(5) Subparts W through Y
(6) Subparts AA through EE
(7) Subparts GG through MM
(8) Subparts OO through YY
(9) Subparts CCC through EEE
(10) Subparts GGG through JJJ
(11) Subparts LLL through RRR
(12) Subparts TTT through VVV
(13) Subpart XXX
(14) Subpart AAAA
(15) Subpart CCCC through KKKK
(16) Subparts MMMM through ZZZZ
(17) Subparts AAAAA through CCCCC
(18) Subparts EEEEE through NNNNN
(19) Subparts PPPPP through TTTTT
The following Subparts of 40 CFR Part 61 are incorporated by reference in their entirety as they exist on September 1, 2004:
(1) Subpart A
(2) Subpart C
(3) Subpart D
(4) Subpart E
(5) Subpart F
(6) Subpart J
(7) Subpart L
(8) Subpart M
(9) Subpart N
(10) Subpart O
(11) Subpart P
(12) Subpart V
(13) Subpart Y
(14) Subpart BB
(15) Subpart FF
(16) Appendix A
(17) Appendix B
(18) Appendix C
Incorporating Rule:
252:100-41-15
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed amendments to OAC 252:100-41-15 would update references to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department of Environmental Quality (DEQ) periodically updates these references in accordance with its delegation agreement with the U.S. Environmental Protection Agency (EPA). Subsection 15(a) would be amended to incorporate the NESHAP, specified in 40 CFR 61, as they exist on September 1, 2004. Subsection 15(b) would be amended to incorporate by reference new and amended Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants in 40 CFR Part 63.
The new MACT standards to be added are:
(1) GGGGG. National Emission Standards for Hazardous Air Pollutants: Site Remediation.
(2) TTTTT. National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
(3) RRRRR. National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
(4) FFFF. National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
(5) KKKK. National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
(6) HHHHH. National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
(7) IIIII. National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
(8) MMMM. National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
(9) AAAAA. National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
(10) EEEE. National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
(11) YYYY. National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
(12) PPPP. National Emission Standards for Hazardous Air Pollutants of Plastic Parts and Products.
(13) IIII. National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
(14) EEEEE. National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
(15) ZZZZ. National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
(16) DDDD. National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
CONTACT PERSON:
Max Price, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 41. CONTROL OF EMISSION OF HAZARDOUS AIR POLLUTANTS AND TOXIC AIR CONTAMINANTS

PART 3. HAZARDOUS AIR ~~CONTAMINANTS~~ POLLUTANTS

252:100-41-15. National emission standards for hazardous air pollutants (NESHAP)

(a) NESHAP, as found in 40 CFR Part 61, are hereby ~~adopted~~ incorporated by reference as they exist on ~~July~~ September 1, ~~2003~~ 2004, with the exception of Subparts B, H, I, K, Q, R, T, W and Appendices D and E, all of which address radionuclides. These standards shall apply to both existing and new sources of hazardous air pollutants (HAPs).
(b) General Provisions as found in 40 CFR Part 63, Subpart A, and the Maximum Achievable Control Technology (MACT) standards as found in 40 CFR Part 63, Subparts F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, LL, KK, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE,FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, JJJJJ, KKKKK, LLLLL,

MMMMM, NNNNN, PPPPP, QQQQQ ~~and~~, RRRRR SSSSS~~,~~ and TTTTT are hereby ~~adopted~~ incorporated by reference as they exist on ~~July~~ September 1, ~~2003~~ 2004. These standards shall apply to both existing and new sources of HAPs.

[OAR Docket #05-804; filed 5-6-05]

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

[OAR Docket #05-805]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix E. Primary Ambient Air Quality Standards [REVOKED]
Appendix E. Primary Ambient Air Quality Standards [NEW]
Appendix F. Secondary Ambient Air Quality Standards [REVOKED]
Appendix F. Secondary Ambient Air Quality Standards [NEW]
AUTHORITY:
Environmental Quality Board powers and duties; 27A, O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S., § 2-5-101, *et seq.*
DATES:
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September 15, 2004 through December 9, 2004
March 4, 2005
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The proposed amendments to Appendices E and F would change the primary and secondary ambient air quality standards for Particulate Matter 2.5 to be consistent with the National Ambient Air Quality Standards.
CONTACT PERSON:
Leon Ashford, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max				40 mg/m^3 (2)35 ppm	235 ug/m^3 (4)0.12 ppm		
8-hr. max				10 mg/m^3 (2)9 ppm	(6)0.08 ppm		
24-hr. max	365 ug/m^3 (2)0.14 ppm	(9) 150 ug/m^3	(7) 65 ug/m^3				
Calendar Qtr.							(5) 1.5 ug/m^3
Annual	80 ug/m^3 (1)0.030 ppm	(3) 50 ug/m^3	(8) 15 ug/m^3			100 ug/m^3 (1) 0.053 ppm	

(1) Annual arithmetic mean
(2) Not to be exceeded more than once per year
(3) The standard is attained when the expected arithmetic mean concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix K.
(4) The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1, as determined by 40 CFR 50, Appendix H.
(5) Maximum arithmetic mean averaged over a calendar quarter
(6) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.08 ppm.
(7) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.
(8) The standard is attained when the Annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.
(9) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m3, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

APPENDIX F. SECONDARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX F. SECONDARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max				40 mg/m^3 (2)35 ppm	235 ug/m^3 (4)0.12 ppm		
3-hr. max	1300 ug/m^3 (2)0.5 ppm						
8-hr. max				10 mg/m^3 (2)9 ppm	(6)0.08 ppm		
24-hr. max		(9) 150 ug/m^3	(7) 65 ug/m^3				
Calendar Qtr.							(5) 1.5 ug/m^3
Annual		(3) 50 ug/m^3	(8) 15 ug/m^3			100 ug/m^3 (1) 0.053 ppm	

(1) Annual arithmetic mean
(2) Not to be exceeded more than once per year
(3) The standard is attained when the expected arithmetic mean concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix K.
(4) The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1, as determined by 40 CFR 50, Appendix H.
(5) Maximum arithmetic mean averaged over a calendar quarter
(6) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.08 ppm.
(7) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.
(8) The standard is attained when the Annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.
(9) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m3, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

[OAR Docket #05-805; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #05-806]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106
DATES:
Comment period:
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATION BY REFERENCE:
Incorporated standards:
Title 40 of the Code of Federal Regulations, Parts 124, 260 through 266, 268, 270, 273, and 279 as amended through July 1, 2004
Incorporating rules:
252:205-3-1
Availability:
From the contact person listed below
ANALYSIS:
The purpose of the proposed amendment to 252:205-3-1 is to incorporate by reference the federal hazardous waste regulations found in Title 40 of the Code of Federal Regulations (40 CFR) as they existed on July 1, 2004.

The changes that will impact Oklahoma facilities deal with revised used oil management standards promulgated at 68 FR 44659. This amendment became effective on September 29, 2003 and accomplished three things: (1) clarifies when used oil contaminated with PCBs is regulated under the RCRA used oil management standards and when it is not; (2) clarifies that mixtures of CESQG wastes and used oil are subject to the RCRA used oil management standards no matter how the mixture will be recycled; and (3) modifies the record keeping requirements for the initial marketer of used oil, requiring only a record of a shipment of used oil to a facility to which that marketer delivers the used oil (i.e., not to subsequent recipients of the used oil). Other modifications deal with delisting petitions, which are applicable only to the specifically-named generators and wastestreams, none of which are in Oklahoma.
CONTACT PERSON:
Gail Hamill (405) 702-5100, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through ~~July 1, 2003~~ July 1, 2004.

[OAR Docket #05-806; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #05-807]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-2. Incorporation by reference [AMENDED]
Subchapter 21. Fees
252:205-21-5. Fees for waste exclusion [NEW]
Subchapter 25. Additional Requirements for Excluding a Waste from a Particular Facility [NEW]
252:205-25-1. General [NEW]
252:205-25-2. Conditions applicable to approved petitions [NEW]
252:205-25-3. Conditions of exclusion [NEW]
252:205-25-4. Reconsideration of an approved petition [NEW]
252:205-25-5. Monitoring of waste approved for exclusion [NEW]
252:205-25-6. Failure to gollow approval conditions [NEW]
252:205-25-7. Effective date [NEW]
Appendix D. Waste Exclusion Fees [NEW]
Appendix E. Wastes Excluded From The Lists In Subpart D of 40 CFR Part 261 As Applicable In Oklahoma [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106
DATES:
Comment period:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATION BY REFERENCE:
Incorporated standards:
Title 40 of the Code of Federal Regulations, Parts 124, 260 through 266, 268, 270, 273, and 279 as amended through July 1, 2004
Incorporating rules:
252:205-3-2
Availability:
From the contact person listed below
ANALYSIS:
The purpose of the proposed amendment to 252:205-3-2 is to implement the Oklahoma portion of the State Authorization for waste exclusion.
The purpose of the proposed new section 252:205-21-5 is to add waste exclusion fees.
The purpose of the new Subchapter 25, as well as Appendices D and E, is to establish the waste exclusion program in Oklahoma, add a fee for waste exclusion applications, and provide a listing for facilities with approved waste exclusion petitions.
CONTACT PERSON:
Gail Hamill (405) 702-5100, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-2. Incorporation by reference

(a) **Part 124.** Procedures For Decision Making, those sections required by 40 CFR 271.14, with the following additions:

(1) § 124.19(a) through (c) and (e);

(2) §§ 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR Part 271.

(b) **Part 260.** Hazardous Waste Management System: General, except 260.21. In 260.20, "Federal Register" is synonymous with "The Oklahoma Register." In 260.20(e), strike the words "or a denial." In 260.22, references to the lists in subpart D of part 261 and the reference to § 261.3(a)(2)(ii) or (c) shall mean the lists in subpart D of part 261 and §261.3(a)(2)(ii) or (c) as adopted by reference and applicable in Oklahoma. In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements: (a) Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)]; (b) Leak detection requirements for all new underground tank systems [3004(o)(4)]; and (c) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.

(c) **Part 261.** Identification and Listing of Hazardous Waste except 261.4(b)(18) which pertains to Utah only, thus should be excluded. In 261.4(e)(3)(iii) delete "in the Region where the sample is collected". In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(d) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".

(e) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(f) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g). In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(g) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g). In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(h) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.

(i) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7

(a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.

(j) **Part 270.** Permit Programs, except 270.14(b)(18).

(k) **Part 273.** Universal Waste Rule.

(l) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."

(m) **Excepted CFR Regulations.** Authority for carrying out excepted CFR regulations remains with EPA.

SUBCHAPTER 21. FEES

252:205-21-5. Fees for waste exclusion

(a) **Submittal fees.**

(1) Application fees for waste exclusion are listed in Appendix D of this chapter.

(2)Payment of the appropriate fee must be made at the time of the submission of the petition to exclude the waste stream(s). The DEQ will not consider said petition(s) until the appropriate fee(s) are paid in full.

(b) **Refund of waste exclusion fees.** Ninety percent (90%) of the fee is refundable to the applicant for any application withdrawn within 30 days of submission.

(c) **Monitoring and inspection fees.** All facilities generating a waste that has been excluded pursuant to 252:205 Subchapter 25 shall pay the monitoring fees set forth in Appendix D of this chapter. Monitoring and inspection fees will not be refunded.

(1) **First year of application.** After the effective date of the rule excluding the waste, the generating facility must pay a prorated portion of the annual monitoring fee listed in Appendix D for the remainder of the year in which the successful petition was approved.

(2) **Subsequent years.** Each facility generating a waste that has been excluded must pay the annual monitoring fees as in Appendix D on or before January 1 of the year following the year the petition was approved.

SUBCHAPTER 25. ADDITIONAL REQUIREMENTS FOR EXCLUDING A WASTE FROM A PARTICULAR FACILITY

252:205-25-1. General

(a) **Purpose, scope and applicability.** The Environmental Quality Board has adopted 40 CFR 260.22 by reference. The federal rule is intended to allow persons to exclude a waste at a particular generating facility from the lists in subpart D of 40 CFR 261. When excluded by EPA, the exclusion is applicable in all States that do not have delisting delegation. Wastes excluded by Oklahoma are excluded in Oklahoma only. Excluded wastes may still be hazardous waste by characteristic under subpart C of 40 CFR 261.

(b) **Procedure for petitions to exclude a waste.** All persons seeking to exclude a waste from some or all requirements under OAC 252:205 must submit a Petition to the DEQ pursuant to 40 CFR 260.20 and 260.22, incorporated by reference at 252:205-3-2, and this subchapter. Additionally, the exclusion of a waste pursuant to a DEQ approved Petition shall be a rulemaking and shall follow the procedures specified in 252:4-5. The person submitting the Petition ("Petitioner") shall follow the exclusion procedure described below:

(1) A pre-petition letter of interest must first be submitted to the DEQ;

(2) A pre-petition scoping meeting must be held with the DEQ;

(3) A pre-petition sampling and analysis plan for data gathering must be submitted for DEQ review and approval;

(4) At least three (3) copies of an approvable waste exclusion petition must be submitted to the DEQ.

252:205-25-2. Conditions applicable to approved petitions

Any Petition to exclude a waste approved by the Environmental Quality Board shall apply only to the particular waste described in the Petition.

252:205-25-3. Conditions of exclusion

The Environmental Quality Board may establish any additional conditions for the waste exclusion either at the time of granting the exclusion or any time thereafter as necessary to protect public health and the environment. Additional conditions for the exclusion will be set forth in Appendix E of this chapter.

252:205-25-4. Reconsideration of an approved petition

The DEQ may request the reopening of a previously approved Petition. If at any time after initial exclusion approval, the generator comes into possession or is otherwise made aware of any data or other information relevant to the excluded waste that is inconsistent with information provided to the DEQ pursuant to the exclusion petition procedure, the generator must report such information, in writing, to the DEQ within thirty(30) days of first obtaining or being made aware of the data.

252:205-25-5. Monitoring of waste approved for exclusion

The approval of a Petition to exclude a waste may include but is not limited to, requirements for periodic monitoring and sampling of the waste, reporting of monitoring results, quantities handled, and similar information to assure that the approval remains valid and continues to be followed.

252:205-25-6. Failure to follow approval conditions

If at any time the DEQ determines that the provisions of the approved Petition are not being followed, appropriate enforcement actions may be taken, including but not limited to, loss of exclusion status.

252:205-25-7. Effective date

The waste for which an exclusion is approved will not be excluded until the rulemaking process is complete and the rule is effective.

APPENDIX D. WASTE EXCLUSION FEES [NEW]

Basic Application Fee	Annual Monitoring Fee
$20,000.00 for the first Petition submitted by a facility; $15,000.00 for each subsequent Petition submitted by the same facility at the same time the first Petition is submitted	$1,200.00 per each excluded waste

APPENDIX E. WASTES EXCLUDED FROM THE LISTS IN SUBPART D OF 40 CFR PART 261 AS APPLICABLE IN OKLAHOMA [NEW]

Facility Name and EPA Identification Number	Physical Address of Generating Facility	Description of Excluded Waste	Additional Conditions of Exclusion
[NAME]	[ADDRESS]	[DESCRIPT]	[ADD'L COND]

[OAR Docket #05-807; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-808]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:410-1-7. [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 35. Medical Use of Byproduct Material
252:410-10-35. [AMENDED]
AUTHORITY:
Environmental Quality Board and Radiation Management Advisory Council powers and duties: 27A O.S. §§ 2-2-101, 2-2-201, and 2-9-104
DATES:
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December 8, 2004 and March 4, 2005
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March 4, 2005
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Final adoption:
May 6, 2005
Effective:
June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 10, Code of Federal Regulations, as it exists on January 1, 2004
Incorporating Rules:
OAC 252:410-1-7(a)
Availability:
Persons wishing to view the applicable portions of the Code of Federal Regulations may do so by visiting the Department of Environmental Quality at the address given below or by contacting the Office of Public Affairs of the U. S. Nuclear Regulatory Commission (http://www.nrc.gov). Persons wishing to view those portions of Subchapters 1 and 10 that are proposed to be amended may do so on the web site of DEQ or by communicating with the Contact Person listed below.
ANALYSIS:
The proposed rulemaking updates incorporations by reference to Title 10 of the Code of Federal Regulations (CFR). The Department periodically updates the reference date for all 10 CFR provisions referenced in OAC 252:410 in accordance with its commitment to the U. S. Nuclear Regulatory Commission (NRC) to retain agreement state status. Section 7 of Subchapter 1 is amended to incorporate 10 CFR requirements as they existed on January 1, 2004. Part 35 of Subchapter 10 is amended to include new provisions for medical use of radioactive material and by renumbering of sections for compatibility with the updated incorporation by reference. Changes that will result from this rulemaking are adjusted requirements for medical use of radioactive material in OAC 252:410-10-35 and clarification of the maximum extremity dose of radiation allowable in OAC 252:410-20-1(c)(3)(A). The changes focus efforts on therapeutic use of radioactive materials and result in diminished regulatory attention to diagnostic medical procedures.

CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-5100, FAX 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:410-1-7. Incorporation of federal regulations by reference

(a) **10 CFR.** References in this Chapter to Title 10 of the Code of Federal Regulations (10 CFR) mean the January 1, ~~2001~~ 2004 publication of 10 CFR.
(b) **40 CFR.** References in this Chapter to Title 40 of the Code of Federal Regulations (40 CFR) mean the July 1, 1998 publication of 40 CFR and 64 Fed. Reg. 5574 (February 3, 1999).

SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 35. MEDICAL USE OF BYPRODUCT MATERIAL

252:410-10-35. 10 CFR 35 incorporations by reference

(a) **Incorporations by reference.** The following provisions are hereby incorporated by reference from 10 CFR 35, Medical Use of Byproduct Material:

(1) **Subpart A; General Information.**
(A) 35.1 - Purpose and scope
(B) 35.2 - Definitions
(C) 35.5 - Maintenance of records
(D) 35.6 - ~~Provisions for research involving human subjects~~ Provisions for the protection of human research subjects
(E) 35.7 - FDA, other Federal and State requirements

(2) **Licensing.**
(A) 35.11 - License required
(B) 35.12 - Application for license, amendment or renewal
(C) 35.13 - License amendments
(D) 35.14 - Notifications
(E) 35.15 - Exemptions regarding Type A specific licenses of broad scope
(F) 35.18 - License issuance
(G) 35.19 - Specific exemptions

(3) **Subpart B; General Administrative Requirements.**
~~(A) 35.20 - ALARA program~~

~~(B) 35.21 - Radiation Safety Officer~~
~~(C) 35.22 - Radiation Safety Committee~~
~~(D) 35.23 - Statements of authority and responsibilities~~
~~(E) 35.25 - Supervision~~
~~(F) 35.29 - Administrative requirements that apply to the provision of mobile nuclear medicine service~~
~~(G) 35.31 - Radiation safety program changes~~
~~(H) 35.32 - Quality management program~~
~~(I) 35.33 - Notifications, reports and records of misadministrations~~
~~(J) 35.49 - Suppliers for sealed sources or devices~~
(A) 35.24 - Authority and responsibilities for the radiation protection program
(B) 35.26 - Radiation protection program changes
(C) 35.27 - Supervision
(D) 35.40 - Written directives
(E) 35.41 - Procedures for administrations requiring a written directive
(F) 35.49 - Suppliers for sealed sources or devices for medical use
(G) 35.50 - Training for Radiation Safety Officer
(H) 35.51 - Training for an authorized medical physicist
(I) 35.55 - Training for an authorized nuclear pharmacist
(J) 35.57 - Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized user and nuclear pharmacist
(K) 35.59 - Recentness of Training

(4) **Subpart C; General Technical Requirements.**
~~(A) 35.50 - Possession, use, calibration and check of dose calibrators~~
~~(B) 35.51 - Calibration and check of survey instruments~~
~~(C) 35.52 - Possession, use, calibration and check of instruments to measure dosages of alpha- or beta-emitting radionuclides~~
~~(D) 35.53 - Measurement of dosages of unsealed byproduct mat erial for medical use~~
~~(E) 35.57 - Authorization for calibration and reference sources~~
~~(F) 35.59 - Requirements for possession of sealed sources and brachytherapy sources~~
~~(G) 35.60 - Syringe shields and labels~~
~~(H) 35.61 - Vial shields and labels~~
~~(I) 35.70 - Surveys for contamination and ambient radiation exposure rate~~
~~(J) 35.75 - Release of individuals containing radiopharmaceuticals or permanent implants~~
~~(K) 35.80 - Technical requirements that apply to the provision of mobile nuclear medicine service~~
~~(L) 35.90 - Storage of volatiles and gases~~
~~(M) 35.92 - Decay in storage~~
(A) 35.60 -Possession, use, and calibration of instruments used to measure the activity of unsealed byproduct material
(B) 35.61 - Calibration of survey instruments
(C) 35.63- Determination of dosages of unsealed byproduct material for medical use
(D) 35.65 - Authorization for calibration, transmission, and reference sources
(E) 35.67 - Requirements for possession of sealed sources and brachytherapy sources
(F) 35.69 - Labeling of vials and syringes
(G) 35.70 - Surveys of ambient radiation exposure rate
(H) 35.75 - Release of individuals containing unsealed byproduct material or implants containing byproduct material
(I) 35.80 - Provision of mobile medical service
(J) 35.92 - Decay-in-storage

(5) **Subpart D; ~~Uptake, dilution and excretion.~~ Unsealed Byproduct Material-Written Directive Not Required.**
(A) 35.100 - Use of unsealed byproduct material in uptake, dilution, excretion studies for which a written directive is not required
(B) ~~35.120 - Possession of survey instrument~~ 35.190 - Training for uptake, dilution, and excretion studies
(C) 35.200 - Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required
(D) 35.204 - Permissible molybdenum-99 concentration
(E) 35.290 - Training for imaging and localization studies

(6) **Subpart E; ~~Imaging and localization~~ Unsealed Byproduct Material - Written Directive Required.**
~~(A) 35.200 - Use of unsealed byproduct material for imaging and localization studies~~
~~(B) 35.204 - Permissible molybdenum-99 concentration~~
~~(C) 35.205 - Control of aerosols and gases~~
~~(D) 35.220 - Possession of survey instruments~~
(A) 35.300 - Use of unsealed by product material for which a written directive is required
(B) 35.310 - Safety instruction
(C) 35.315 - Safety precautions
(D) 35.390 - Training for use of unsealed byproduct material for which a written directive is required
(E) 35.392 - Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries)
(F) 35.394 - Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries)

(7) **Subpart F; ~~Radiopharmaceuticals for therapy~~ Manual Brachytherapy.**
~~(A) 35.300 - Use of unsealed byproduct material for therapeutic administration~~
~~(B) 35.310 - Safety instruction~~
~~(C) 35.315 - Safety precautions~~

~~(D) 35.320 - Possession of survey instruments~~
(A) 35.400 - Use of sources for manual brachytherapy
(B) 35.404 - Surveys after source implant and removal
(C) 35.406 - Brachytherapy sources accountability
(D) 35.410 - Safety instruction
(E) 35.415 - Safety precautions
(F) 35.432 - Calibration measurements of brachytherapy sources
(G) 35.433 - Decay of strontium-90 sources for ophthalmic treatments
(H) 35.457 - Therapy related computer systems
(I) 35.490 Training for use of manual brachytherapy sources
(J) 35.491 - Training for ophthalmic use of strontium-90

(8) **Subpart G; Sealed Sources for ~~brachytherapy~~ diagnosis.**
~~(A) 35.400 - Use of sources for brachytherapy~~
~~(B) 35.404 - Release of patients or human research subjects treated with temporary implants~~
~~(C) 35.406 - Brachytherapy sources inventory~~
~~(D) 35.410 - Safety instruction~~
~~(E) 35.415 - Safety precautions~~
~~(F) 35.420 - Possession of survey instrument~~
(A) 35.500 - Use of sealed sources for diagnosis
(B) 35.590 - Training for use of sealed sources for diagnosis

(9) **Subpart H; ~~Sealed sources for diagnosis~~ Photon Emitting Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units.**
~~(A) 35.500 - Use of sealed sources for diagnosis~~
~~(B) 35.520 - Availability of survey instrument~~
(A) 35.600 - Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit
(B) 35.604 - Surveys of patients and human research subjects treated with a remote afterloader unit
(C) 35.605 - Installation, maintenance, adjustment, and repair
(D) 35.610 - Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units
(E) 35.615 - Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units
(F) 35.630 - Dosimetry equipment
(G) 35.632 - full calibration measurements on teletherapy units
(H) 35.633 - Full calibration measurements on remote afterloader units
(I) 35.635 - Full calibration measurements on gamma sterotactic radiosurgery units
(J) 35.642 - Periodic spot-checks for gamma stereotactic radiosurgery units
(K) 35.643 - Periodic spot-checks for remote afterloader units
(L) 35.645 - Periodic spot-checks for gamma stereotactic radiosurgery units
(M) 35.647 - Additional technical requirements for mobile remote afterloader units
(N) 35.652 - Radiation surveys
(O) 35.655 - Five year inspection for teletherapy and gamma stereotactic radiosurgery units
(P) 35.657 - Therapy-related computer systems
(Q) 35.690 - Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units

(10) **Subpart I~~; Teletherapy.~~**
~~(A) 35.600 - Use of a sealed source in a teletherapy unit~~
~~(B) 35.605 - Maintenance and repair restrictions~~
~~(C) 35.606 - License amendments~~
~~(D) 35.610 - Safety instruction~~
~~(E) 35.615 - Safety precautions~~
~~(F) 35.620 - Possession of survey instrument~~
~~(G) 35.630 - Dosimetry equipment~~
~~(H) 35.632 - Full calibration measurements~~
~~(I) 35.634 - Periodic spot-checks~~
~~(J) 35.636 - Safety checks for teletherapy facilities~~
~~(K) 35.641 - Radiation surveys for teletherapy facilities~~
~~(L) 35.643 - Modification of teletherapy unit or room before beginning a treatment program~~
~~(M) 35.645 - Reports of teletherapy surveys, checks, tests and measurements~~
~~(N) 35.647 - Five year inspection~~

(11) **Subpart J; Training and experience requirements.**
(A) 35.900 - Radiation Safety Officer
~~(B) 35.901 - Training for experienced Radiation Safety Officer~~
(~~C~~ B) 35.910 - Training for uptake, dilution, excretion studies
(~~D~~ C) 35.920 - Training for imaging and localization studies
(~~E~~ D) 35.930 - Training for therapeutic use of unsealed byproduct material
(~~F~~ E) 35.932 - Training for treatment of hyperthyroidism
(~~G~~ F) 35.934 - Training for treatment of thyroid carcinoma
(~~H~~ G) 35.940 - Training for use of brachytherapy sources
(~~I~~ H) 35.941 - Training for ophthalmic use of strontium-90
(~~J~~ I) 35.950 - Training for use of sealed sources for diagnosis
(~~K~~ J) 35.960 - Training for ~~teletherapy~~ use of therapeutic medical devices
(~~L~~ K) 35.961 - Training for authorized medical physicist
~~(M) 35.970 - Training for experienced authorized users~~

~~(N) 35.971 - Physician training in a three month program~~

~~(O) 35.972 - Recentness of training~~

(~~P~~L) 35.980 - Training for an authorized nuclear pharmacist

(~~Q~~M) 35.981 - Training for experienced nuclear pharmacists

(12) **Subpart K; Other Medical Uses of Byproduct Material or Radiation From Byproduct Material.** 35.1000 - Other medical uses of byproduct material or radiation from byproduct material

(13) **Subpart L; Records.**

(A) 35.2024 - Records of authority and responsibilities for radiation protection programs

(B) 35.2026 - Records of radiation protection program changes

(C) 35.2040 - Records of written directives

(D) 35.2041 - Records for procedures for administration requiring a written directive

(E) 35.2060 - Records of calibrations of instruments used to measure the activity of unsealed byproduct materials

(F) 35.2061 - Records of radiation survey instrument calibrations

(G) 35.2063 - Records of dosages of unsealed byproduct material for medical use

(H) 35.2067 - Records of leaks tests and inventory of sealed sources and brachytherapy sources

(I) 35.2070 - Records of survey for ambient radiation exposure rate

(J) 35.2075 - Records of the release of individuals containing unsealed byproduct material or implants containing byproduct material

(K) 35.2080 - Records of mobile medical services

(L) 35.2092 - Records of decay-in-storage

(M) 35.2204 - Records of molybdenum-99 concentrations

(N) 35.2310 - Records of safety instruction

(O) 35.2404 - Records of surveys after source implant and removal

(P) 35.2406 - Records of brachytherapy source accountability

(Q) 35.2432 - Records of calibration measurements of brachytherapy sources

(R) 35.2433 - Records of decay of strontium-90 sources for ophthalmic treatments

(S) 35.2605 - Records of installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units

(T) 35.2610 - Records of safety procedures

(U) 35.2630 - Records of dosimetry equipment used with remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units

(V) 35.2632 - Records of teletherapy, remote afterloader, and gamma stereotactic radiosurgery full calibrations

(W) 35.2642 - Records of periodic spot-checks for teletherapy units

(X) 35.2643 - Records of periodic spot-checks for remote afterloader units

(Y) 35.2645 - Records of periodic spot checks for gamma sterotactic radiosurgery units

(Z) 35.2647 - Records of additional technical requirements for mobile remote afterloader units

(AA) 35.2652 -Records of surveys of therapeutic treatment units

(BB) 35.2655 - Records of 5-year inspection for teletherapy and gamma stereotactic radiosurgery units

(14) **Subpart M; Reports.**

(A) 35.3045 - Report and notification of a medical event

(B) 35.3047 - Report and notification of a dose to an embryo/fetus or a nursing child

(C) 35.3067 - Report of a leaking source

(b) **Exceptions.** The provisions for communication with NRC of 10 CFR § 30.6 referenced in §§ 35.12, 35.14, 35.32, 35.59 and 35.645 are not incorporated by reference. All correspondence regarding license requirements, and any notifications or reports required by this Part, shall be directed to DEQ.

[OAR Docket #05-808; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-809]

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Part 1. General Provisions
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ANALYSIS:
The proposed amendments to Subchapter 3 increase the term for radiation machine permits to a time not to exceed ten years, clarify permit application requirements, and add a fee due date.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-5100, FAX 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 3. RADIATION MACHINES - COMMON REQUIREMENTS

PART 1. GENERAL PROVISIONS

252:410-3-3. Permit application and registration

(a) **Permit application.** Applicants for radiation machine operating permits must file an application according to the requirements of Subchapter 7.

(1) ~~**New permit**~~ **Permit application content.** Applications for ~~initial (new)~~ new or renewal operating permits must include:

(A) the name, address and contact numbers of applicant; signed certifications required by Subchapter 7; facility address, the designated radiation safety officer's name, telephone/fax number and qualifications,

(B) identification of the type of radiation machine permit sought;

(C) a brief summary of proposed uses of the machines;

(D) a ~~brief~~ description of the design of any radiation safety vault and/or shielded area including drawings and shielding calculations;

(E) exhibits relevant and necessary to support the application including a written radiation safety program and any initial survey report(s);

(F) any other summary information or data necessary to show compliance with Subchapters 11, 13, 15 and/or 17; and

(G) a completed registration form.

(2) **Issuance.** In addition to the criteria referenced in Subchapter 7, DEQ approval of a radiation machine permit application will be based on whether:

(A) the applicant is qualified by reason of training and experience to use the machine in such a manner as to minimize danger to health, safety, property and the environment; and

(B) the applicant's proposed or existing equipment, facilities and radiation protection plan including operating and emergency procedures meet the requirements of this Chapter.

(3) **Permit** ~~**renewal**~~ **term.** ~~For continuous authorization to use radiation machines in Oklahoma, a permittee must renew his radiation machine permit yearly in accordance with Subchapter 7.~~ Permits shall be issued for a fixed term, not to exceed ten (10) years from the date of issuance.

(b) **Registration.** All non-exempt radiation machines must be registered.

(1) **Registering initially.** Initial registration is required of applicants for new radiation machine operating permits or reciprocity recognitions.

(2) **Content.** The registrant must list his machines and provide information on the machines, the facility address, person responsible for machine safety, telephone/fax numbers, the location (if known) of any temporary in-state work site(s), and other data requested on DEQ's registration form.

(3) **Updating registration.** Permittees must update their registration at least 30 days after acquiring a new machine or after disposing or transferring a registered machine to another person. Updates require the submittal of a corrected registration form to DEQ.

(4) **Registering machines brought into state.** Machines brought into Oklahoma must be registered in accordance with this Subchapter.

(c) **Application and** ~~**renewal**~~ **annual permit fees.** Persons must pay fees based on the number of non-exempt machines within their possession or control according to the fee schedules of Appendix A. Subject to the maximum fees set by Appendix A, fees due from persons who manufacture, assemble or repair radiation machines in the state will be determined by the maximum number of tubes to be tested by the applicant at any one time during the permit term. Annual fees are due each year on the last day of the month in which the permit was issued.

[OAR Docket #05-809; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

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Subchapter 7. Radiation Management Authorizations; Procedures and Requirements
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252:410-7-2. [AMENDED]
252:410-7-3. [AMENDED]
252:410-7-4. [AMENDED]
252:410-7-5. [AMENDED]

252:410-7-6. [AMENDED]
Part 3. Reciprocity Recognition
252:410-7-31. [AMENDED]
252:410-7-32. [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 101. ~~State Agreement~~ Radioactive Materials Program Fees
252:410-10-101. [AMENDED]
252:410-10-110. [AMENDED]
252:410-10-118. [AMENDED]

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ANALYSIS:
The proposed changes to Subchapter 7 add provisions to levy late fees under certain conditions when a required fee is not paid in a timely manner; add an additional example of an amendment to a plan, permit, or license; and strengthen the language related to the renewal authorizations to require a complete disclosure of pertinent information with respect to the application for renewal of a license. The proposed changes to Subchapter 10 clarify DEQ's intent to charge at full cost the inspection and oversight activities at DEQ licensed facilities undergoing decommissioning. Non-substantive changes to Subchapters 7 and 10 include replacing the words "State Agreement" with the words "Radioactive Materials" to reflect the 2004 revision to the title of Subchapter 10, Radioactive Materials Program, and corrections to citations to DEQ's Rules of Practice and Procedure from the now-revoked Chapter 2 to the new Chapter 4.

CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-5100, FAX 405-702-5101.

PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 7. RADIATION MANAGEMENT AUTHORIZATIONS; PROCEDURES AND REQUIREMENTS

PART 1. GENERAL PROVISIONS COMMON TO ALL AUTHORIZATIONS

252:410-7-1. Radiation management authorizations in general

(a) **Purpose.** This Subchapter sets forth the basic procedural requirements that apply to all radiation management authorizations.

(b) **Applicability.** This Subchapter applies to all persons required by this Chapter to hold DEQ authorizations.

(c) **Effect.** An authorization does not convey any property rights of any sort or any exclusive privilege; does not sanction any invasion of other private rights or any infringement of federal, state, or local law or rules; and does not legalize any radiation management activity outside its scope.

(d) **Types.** Authorizations include:

(1) industrial radiographer certification (Subchapter 5);

(2) LBP-XRF permit and registration (Subchapter 19);

(3) radiation machine operating permits and registration for:

(A) x-ray systems and particle accelerators used for therapeutic purposes (Subchapters 3 and 11);

(B) analytical and industrial x-ray systems (Subchapters 3 and 13);

(C) industrial x-ray radiography systems (Subchapters 3, 13 and 15); and

(D) particle accelerators used for purposes other than therapy (Subchapters 3 and 17);

(4) ~~State Agreement~~ Radioactive Materials licenses (Subchapter 10);

(5) approval of ~~State Agreement~~ Radioactive Materials license termination and/or decommissioning plans (Subchapter 10) and decontamination plans (Subchapter 20); and

(6) reciprocity recognition and registration (Part 3 of this Subchapter).

252:410-7-2. Uniform application requirements

(a) **Applicable law.** All radiation management applicants are subject to the authorization requirements of this Chapter and the tiered application procedural requirements of the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 *et seq.*, and Subchapter ~~15 of OAC 252:2, Procedures of the Department of Environmental Quality~~ 7 of OAC 252:4 Rules of Practice and Procedure. Applicants for new, amended or renewed specific licenses under the ~~State Agreement~~ Radioactive Materials program are also subject to 10 CFR licensing procedures and requirements as incorporated by reference in Subchapter 10.

(b) **Application classifications.** The uniform process to which the applicant is subject is determined by the tier in which the application is classified in accordance with ~~252:2-15-52, 53 and 54~~ 252:4-7-55, 56, or 57.

252:410-7-3. General application requirements

(a) **Procedures and fees.**

(1) **Forms.** Applicants shall use DEQ application forms or formats.

(2) **Filing.** All applications must be filed with DEQ Radiation Management, be legible and provide at a minimum all applicable information requested by the form or format.

(3) **Fees.** All application fees are due at the time of filing.

(4) **Late fees.**

(A) Any fee with a due date will be processed without penalty if the applicable fee is paid within thirty (30) days of the original due date.

(B) If the applicable fee is paid thirty-one (31) or more days after the original due date, a penalty fee of five percent (5%) of the original fee per month late will be charged. Such fee will not exceed the amount of the renewal fee.

(C) If the original fee was Ten Thousand dollars ($10,000) or more, the penalty fee will be one and one-half percent (1.5%) of the outstanding balance per month.

(b) **Content.** Applicants shall comply with the Subchapter(s) applicable to the type of authorization for specific content requirements.

(c) **Certifications.**

(1) **Certification of application.** Each application must include a statement signed by the applicant certifying that "The application was prepared under the applicant's direction or supervision and the information it contains is, to the best of his knowledge and belief, true, accurate and complete."

(2) **Certification of qualifications of personnel.** Except for applications for industrial radiographer certification, each application must include a statement signed by the applicant certifying that:

(A) "Each individual performing or supervising the applicant's radiation management activities under this authorization will be adequately trained in radiation safety and will comply with all applicable requirements of the Oklahoma Radiation Management Rules, OAC 252:410", and

(B) "The individual designated in the application as the radiation safety officer is qualified by training and experience to be responsible for the applicant's radiation management activities and has the authority to terminate any of the applicant's radiation operations if such action is deemed necessary to minimize harm to health, safety, property and/or the environment."

(d) **Classification of amendments of plans, permits and licenses.** Applications for amendments to existing radiation management authorizations for which DEQ approval is required shall be classified as minor or major by the DEQ according to the following criteria. When an applicant requests multiple types of amendments, the highest tier classification of ~~252:2-15-52, 53 or 54~~ 252:4-7-55, 56 or 57 shall apply.

(1) **Minor amendment.** Minor amendment of a plan, permit or license means any change that is determined by DEQ to afford similar or decreased risk to or no added impact on health, safety and/or the environment. Examples include amendments that are not specified as major amendments and:

(A) Are informational and clerical in nature;

(B) Decrease authorized quantities, concentration levels, and/or forms of radioactive materials;

(C) Substitute an authorized procedure, method or activity with one that has a more beneficial impact on health or safety or the environment;

(D) Increase on-site monitoring or recordkeeping, reporting or training activities; or

(E) Provide for alternate or additional personnel monitoring within acceptable requirements of 10 CFR 20.

(2) **Major amendment.** Major amendments of a plan, permit or license means any change which DEQ determines in writing has the potential of an increased adverse impact on health, safety and/or the environment, or which involves methods or procedures for which no specific limits and standards are specified in Chapter 410. Examples include amendments that:

(A) Increase quantities or concentration levels beyond the limits set by the authorization;

(B) Add one or more forms or isotopes of radioactive material to those previously authorized;

(C) Add one or more sources of radiation for therapeutic use;

(~~C~~ D) Authorize a disposal procedure under the procedures of 10 CFR 20.2002; ~~or~~

(~~D~~ E) Substitute alternative method(s) for monitoring on-site releases of radioactive material at a site or facility or a method which changes off-site monitoring.

252:410-7-4. Authorization determinations

(a) **Application review.** Each application is subject to DEQ review provisions of ~~Subchapter 15 of 252:2, Procedures of the Department of Environmental Quality~~ OAC 252:4, Rules of Practice and Procedure, Subchapter 7.

(b) **Criteria for issuance or acceptance.** DEQ may deny any application in writing for cause as established by this Chapter and/or the issuance/denial criteria of ~~252:2-15-30(d)~~ 252:4-7-1.

(c) **Amendment/modification.** DEQ may, for cause or upon the applicant's request, add conditions to any authorization or amend or modify any existing authorization.

(d) **Consent to conditions.** Beginning radiation management activities under an authorization constitutes consent by the holder to all conditions to which the authorization is subject.

(e) **Severability.** The provisions of any authorization are severable. If a provision thereof is invalidated by a court of law, the remaining provisions shall remain valid.

252:410-7-5. Authorization transfers

(a) **"Transfer" defined.** For purposes of this section, "transfer" means to convey from one person to another a majority ownership interest in an entity holding a DEQ authorization by any means other than gift or devise and includes the transfer of deed, transfer of more than 50 percent of the entity's assets or stock, and/or creation of a legal entity as a new holder of the authorization.

(b) **Transferability.** Industrial radiographer certifications and reciprocity recognitions are not transferable. LBP-XRF permits, radiation machine operating permits and ~~State Agreement~~ Radioactive Materials specific licenses are transferable. Transfers will be approved by DEQ only when:

(1) A DEQ inspection has shown the transferor and transferee to be in compliance with this Chapter;

(2) The transferee has agreed in writing to comply with this Chapter and the Act, all permit or license conditions, approved plans, and the terms of any orders issued pursuant thereto;

(3) All monies owed to DEQ by transferor or transferee have been paid;

(4) For permits or licenses requiring financial assurances, DEQ has reviewed and adjusted as needed the amount of financial assurance required and has received the requisite amount of new financial assurances from or on behalf of the transferee; and

(5) For ~~State Agreement~~ Radioactive Materials specific licenses, the licensees have also complied with all applicable requirements of 10 CFR.

(c) **Operation by transferee.** A transferee cannot commence radiation management activities under a DEQ authorization until the authorization has been fully transferred and approved by DEQ.

252:410-7-6. Renewal of authorizations

(a) **Types.** ~~State Agreement~~ Radioactive Materials specific licenses and all permits, reciprocity recognitions and industrial radiographer certifications may be renewed according to the procedures and requirements of 252:410-7-3 and this Section.

(b) **Procedures.**

(1) ~~State Agreement~~ Radioactive Materials specific licensees must also comply with 10 CFR requirements applicable to the type of license.

(2) Permittees and recognized persons must file ~~renewal~~ complete applications ~~that~~ for renewal, using appropriate guidance, and also identify the information which has changed since their last application.

(3) Industrial radiographers seeking renewal of their certifications must apply for, take and pass a new certification examination.

(c) **Fees.** No renewal application will be acted upon until payment of the applicable fee is made.

(d) **Filing.** Authorizations not renewed by their expiration date expire unless the applicant has properly filed a renewal application with DEQ on or before the existing authorization's expiration date. A renewal application filed at least 30 days prior to the authorization's expiration date shall be deemed to have been timely filed. All persons are responsible for timely renewal of DEQ authorizations regardless of whether they receive an invoice from DEQ.

(e) **Failure to file on or before expiration date.**

(1) **Authorization expires.** Upon the expiration of an authorization, the holder is no longer authorized to conduct radiation management activities in the State.

(2) **New application required.** Persons wanting to become re-authorized after an authorization has expired, must file an application and pay fees as a new applicant plus pay a penalty fee for non-renewal.

(f) **Renewal criteria.** In addition to the criteria referenced in 252:410-7-4, DEQ's approval of any renewal shall be based on the applicant's compliance record and cooperative participation in compliance inspections and investigations.

PART 3. RECIPROCITY RECOGNITION

252:410-7-31. DEQ reciprocity recognition

Out-of-state authorizations eligible for DEQ recognition are:

(1) LBP-XRF permits (Subchapter 19);

(2) Industrial radiographer certifications (Subchapter 5);

(3) NRC and ~~State Agreement~~ Radioactive Materials licenses (Subchapter 10); and

(4) Radiation machine operating permits (Subchapters 3, 11, 13, 15 and 17).

252:410-7-32. Reciprocity recognition application requirements

(a) **Application required.** To qualify for new or renewed DEQ recognition, a person must apply to DEQ for recognition and satisfy the requirements of Part 1 of this Subchapter.

(b) **Application fees.** Applicants for reciprocity recognition in ~~State Agreement~~ Radioactive Materials program areas are subject to the reciprocity fee schedule of 252:410-10-118. All other applicants for reciprocity recognition are subject to the same fee schedules as are in-state permit applicants.

SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 101. ~~STATE AGREEMENT~~ RADIOACTIVE MATERIALS PROGRAM FEES

252:410-10-101. Fee schedules.

Radioactive Materials Program ~~annual~~ fees ~~and license application fees~~ are set forth in this part. Categories of Radioactive Materials Program licenses set forth in this Part, but not the amount of the fees, are the same as categories of materials licenses set forth by NRC in a schedule following 10 CFR §171.16. The NRC schedule number for each license category is noted in brackets.

252:410-10-110. Fees for decommissioning, decontamination, reclamation or site restoration activities

Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities and oversight of authorized activities, including inspections, reviews and report preparation - License application fee, license renewal fee ~~and~~, license amendment fee and oversight fees - at full cost. [14.].

252:410-10-118. Reciprocity fees

Applicants for reciprocity shall pay an annual fee as follows:

(1) For applications received three or more days before the work is to be performed, the higher of $2,500.00 or full cost up to the applicable annual fee, and for applications received less than three days before the work is to be performed, the higher of $3,500.00 or full cost, but not to exceed the applicable annual fee for the ~~category~~ following license categories:

(A) 252:410-10-104(e),(l) and (m);
(B) 252:410-10-105;
(C) 252:410-10-106(b);
(D) 252:410-10-107;
(E) 252:410-10-110.

(2) For applications received three or more days before the work is to be performed, $1,500.00, and for applications received less than three days before the work is to be performed, $2,500.00, for each license category not listed in paragraph (1) of this section.

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TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #05-810]

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ANALYSIS:
The proposed rulemaking amends the schedule of fees charged to applicants for new radioactive materials licenses by deleting the option to file as a small entity.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-5100, FAX 405-702-5101.

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SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 101. RADIOACTIVE MATERIALS PROGRAM FEES

252:410-10-111. Fees for small entities

~~Licenses issued to any of the following small~~ Small entities are subject to the lower annual fees set forth below. To be eligible for the lower fees, an individual empowered to act on behalf of ~~an applicant for a new or renewed radioactive materials license~~ a licensee must certify annually that the ~~applicant~~ licensee meets the following qualifications.

(1) **Small business.** A for-profit concern that provides a service, or a concern not engaged in manufacturing with annual gross receipts for the previous fiscal year within the ranges set forth below, averaged over its last 3 completed fiscal years.

(A) $350,000 to $5,000,000: Annual fee - $1,500.00.
(B) Less than $350,000: Annual fee - $350.00.

(2) **Manufacturing industry.** A manufacturing concern with an average number of employees within the ranges set forth below, based upon employment during each pay period for the preceding 12 calendar months.

(A) 35 to 500 employees: Annual fee - $1,500.00.
(B) Less than 35 employees: Annual fee - $350.00.

(3) **Small organization.** A not-for-profit organization that is independently owned and operated and has annual gross receipts within the ranges set forth below.

(A) $350,000 to $5,000,000: Annual fee - $1,500.00.

(B) Less than $350,000: Annual fee - $350.00.

(4) **Small governmental jurisdiction.** (Includes publicly supported educational institutions.) A government of a city, county, town, township, village, school district, or special district with a population within the following ranges.

(A) 20,000 to 50,000 population: Annual fee - $1,500.00.

(B) Less than 20,000 population: Annual fee - $350.00.

(5) **Small educational institution.** An education institution that is not state or publicly supported and employment within the following ranges.

(A) 35 to 500 employees: Annual fee - $1,500.00.

(B) Less than 35 employees: Annual fee - $350.00.

[OAR Docket #05-810; filed 5-6-05]

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

[OAR Docket #05-812]

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252:606-1-4. [AMENDED]
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252:606-1-4
Availability:
From the contact person listed below
ANALYSIS:
The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2004.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. INTRODUCTION

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

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2003~~ 2004.

[OAR Docket #05-812; filed 5-6-05]

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

[OAR Docket #05-813]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:611-1-3. [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 40, Part 130 of the Code of Federal Regulations as published on July 1, 2004
Incorporating rules:
252:611-1-3
Availability:
From the contact person listed below
ANALYSIS:
The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2004.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:611-1-3. Adoption and incorporation by reference

40 CFR Part 130 is adopted and incorporated by reference, as published on July 1, 2004, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #05-813; filed 5-6-05]

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

[OAR Docket #05-814]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:616-1-3. Engineer Required [NEW]
Subchapter 7. Surface Impoundment Standards
252:616-7-1. Construction and maintenance [AMENDED]
Subchapter 9. Tank System Standards
252:616-9-1. ~~Tank system materials~~ Authorized use of tank systems [AMENDED]
252:616-9-2. ~~Tank system requirements~~ Tank system materials [AMENDED]
252:616-9-3. Tank system requirements [NEW]
Subchapter 11. Land Application Standards
252:616-11-1. Restrictions [AMENDED]
252:616-11-5. Recordkeeping [AMENDED]
252:616-11-6. Dust Suppression [NEW]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The proposed amendments to Chapter 616 are the result of a workgroup comprised of facility representatives, consulting companies, associations, DEQ staff and three state agencies. The changes include the addition of language to make clear that design and closure under this chapter are considered the practice of engineering by State Statute, eliminating duplicative language relating to storm water requirements, clarifying wastewater classifications that can be treated in tank systems, making language consistent with other rules, prohibiting the land application of industrial sludge in scenic river basins, and setting specific requirements for the use of Class III wastewater for dust suppression.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. INTRODUCTION

252:616-1-3. Engineer Required

Pursuant to 59 O.S., § 475.2 and a ruling by the Oklahoma State Board of Registration for Professional Engineers and Land Surveyors, the design and closure activities required by this chapter constitute the practice of engineering and thus, require the seal and signature of an engineer registered to practice in the State of Oklahoma.

SUBCHAPTER 7. SURFACE IMPOUNDMENT STANDARDS

252:616-7-1. Construction and maintenance

All industrial surface impoundments must comply with the construction and maintenance requirements of this section.

(1) **Stormwater.** All surface impoundments, except those designed specifically for stormwater runoff, shall be constructed to prevent the entrance of runoff waters. ~~Stormwater shall in all cases be diverted away from the impoundment.~~

(2) **Slope.** Inner and outer dike slopes shall not be steeper than 1 vertical to 3 horizontal (1:3). Steeper slopes will be considered where surface construction is of material, such as soil cement, that will prohibit the growth of vegetation. Concrete or rock face surface impoundments may be exempted from this requirement by the DEQ on a case by case basis.

(3) **Berms and dikes.** Construct berms and dikes to provide a flat surface wide enough to provide safe access for inspection and maintenance of the surface impoundment.

(4) **Depth to groundwater.** The bottom of any surface impoundment shall be a minimum of 15 feet above the historic maximum groundwater table.

(A) Perched water is considered groundwater.

(B) If a distance of (15) feet is not physically possible, a lesser distance may be approved by the DEQ depending on the wastewater and impoundment classification, use of liners or other means which will protect waters of the state.

(5) **Erosion control.** Protect all earthen surface impoundment dikes and berms against erosion by using soil, gravel, concrete pads, shallow-root vegetation or other methods. Trees and deep-root vegetation shall not be used as erosion control and shall be removed in a timely manner to maintain the integrity and stability of the impoundment. Protect inner dikes from wave action and outer dikes from runoff and floodwaters.

(A) **Seeding.** Where riprap is not used, apply at least 4 inches of fertile top soil to dikes to establish an adequate vegetative cover. Before prefilling, establish vegetation on dikes from the outside toe to 2 feet above the surface impoundment bottom on the interior as measured on the slope. Specify perennial, low-growing grasses that spread rapidly. Alfalfa or other long-rooted grasses should not be used for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

(B) **Additional protection.** Provide extra protection where inner dikes may be subjected to severe wind action, such as surface impoundments larger than 5 acres and where the surface impoundment surface will often be exposed to strong winds. Also protect areas of turbulence in aerated cells and all pipe penetrations. Install riprap, soil cement or other recognized material. Protect the inner dikes from 1 foot vertically above the high water elevation to 2 feet vertically below the minimum operating elevation. Place riprap on a filter bed at least 6 inches thick, and use material that will stay in place and resist erosion.

(6) **Holding capacity.** Total retention surface impoundments shall be sized to contain the design flow of wastewater (including sludge) plus expected rainfall plus 3 feet of freeboard. Where total retention is obtained by surface evaporation, the required area shall be based on design flow plus 90th percentile rainfall less the pan evaporation rates for the area where the impoundment will be located. See supplemental information Table of Rainfall and Evaporation Data.

(7) **Freeboard.** Maintain at least 3 feet of freeboard on all surface impoundments unless otherwise specified in a permit.

(8) **Liner systems.** All surface impoundments shall be constructed with a liner system appropriate for the classification of wastewater from normal daily operation and when applicable, wastewater due to spill, by-pass or unit process failure.

(9) **Liner materials.** The chemical and physical properties of liner materials must ensure that such structures and barriers do not fail to contain or control seepage or release of waste and wastewater because of:

(A) pressure gradients;

(B) physical contact with wastewater;

(C) chemical reactions with wastewater;

(D) the stress of installation;

(E) the stress of daily operation and maintenance; and

(F) exposure to sunlight, temperature and climatic extremes, freeze/thaw cycles, and wet/dry cycles.

(10) **Total retention.** Total retention surface impoundments shall not have outfall structures which may allow or cause the release of wastewater to the environment (such as pipes, man-made trenches, erosion-induced trenches, or impoundment overflow).

(11) **Flow-through.** Flow-through surface impoundment systems shall have a device that can immediately shut-off influent or effluent flows in the event of a spill, bypass, unit process failure or other emergency.

SUBCHAPTER 9. TANK SYSTEM STANDARDS

252:616-9-1. ~~Tank system materials~~ Authorized use of tank systems

~~Tank systems are classified according to their material, as follows:~~

~~(1) **Concrete.** Concrete tanks shall be constructed of 3,000 pounds per square inch compressive strength concrete as determined after 28 days curing time by standard concrete compression test. Tanks may be poured in place or precast and mechanically vibrated. The bottom of all concrete septic tanks shall be integral with or monolithically poured with the walls.~~

~~(2) **Metal.** Materials that are corrosion resistant, have protective coatings, or cathodic protection shall be~~

~~used for metal underground pipe, fittings, and all tanks installed in areas where the soil resistivity is less than 12,000 ohms/centimeter. All tanks, pipes, and fittings shall be resistant to the wastewater and to their environment.~~

~~(3) **Plastic and fiberglass.** Plastic and fiberglass tanks may be approved by the DEQ based on their wastewater and environmental compatibility on a case by case basis.~~

The use of tank systems for all wastewater classifications is authorized as follows:

(1) Tank systems without lateral lines can be used for the treatment of Class I, II, III, and V wastewater.

(2) Tank systems with lateral lines are subject to the Underground Injection Control permitting process.

252:616-9-2. ~~Tank system requirements~~ Tank system materials

~~(a) **Tank system construction.** The following minimum construction and maintenance requirements apply to all industrial tank systems regardless of wastewater classification:~~

~~(b) **Lateral lines.** Tanks with lateral lines must have at least two compartments operated in series, with the discharge to the lateral lines from the final compartment. Tank systems which receive Class I wastewater shall not have lateral lines.~~

~~(c) **Integrity testing.** If the DEQ has reasonable grounds to believe that any pipes, fittings, or other parts of a tank system may be a source of contamination, the DEQ shall require the owner or operator to conduct tests demonstrating the integrity of the system and to provide the results of such tests to the DEQ. The integrity testing requirement shall be performed according to current techniques as set out in the National Fire Protection Association publication 329 (See "Recommended Practices for Handling Underground Leakage of Flammable and Combustible Liquids," NFPA 329, 1999, Batterymarch Park, Quincy, Mass.) or by other generally accepted procedures approved by the DEQ.~~

~~(d) **Percolation tests.** Before constructing an industrial tank system with lateral lines, conduct percolation tests according to the procedure in Subchapter 3 of OAC 252:641.~~ Tank systems are classified according to their material, as follows:

(1) **Concrete.** Concrete tanks shall be constructed of 3,000 pounds per square inch compressive strength concrete as determined after 28 days curing time by standard concrete compression test. Tanks may be poured in place or precast and mechanically vibrated. The bottom of all concrete tanks shall be integral with or monolithically poured with the walls.

(2) **Metal.** Materials that are corrosion resistant, have protective coatings, or cathodic protection shall be used for metal underground pipe, fittings, and all tanks installed in areas where the soil resistivity is less than 12,000 ohms/centimeter. All tanks, pipes, and fittings shall be resistant to the wastewater and to their environment.

(3) **Plastic and fiberglass.** Plastic and fiberglass tanks may be approved by the DEQ based on their wastewater and environmental compatibility on a case by case basis.

252:616-9-3. Tank system requirements

Tank system construction. The following minimum construction and maintenance requirements apply to all industrial tank systems regardless of wastewater classification:

(1) **Lateral lines.** Tanks with lateral lines must have at least two compartments operated in series, with the discharge to the lateral lines from the final compartment.

(2) **Integrity testing.** If the DEQ has reasonable grounds to believe that any pipes, fittings, or other parts of a tank system may be a source of contamination, the DEQ shall require the owner or operator to conduct tests demonstrating the integrity of the system and to provide the results of such tests to the DEQ. The integrity testing requirement shall be performed according to current techniques as set out in the National Fire Protection Association publication 329 (See "Recommended Practices for Handling Underground Leakage of Flammable and Combustible Liquids," NFPA 329, 1999, Batterymarch Park, Quincy, Mass.) or by other generally accepted procedures approved by the DEQ.

(3) **Percolation or soil profile tests.** Before constructing an industrial tank system with lateral lines, conduct percolation tests or soil profile tests according to the procedure in OAC 252:641. The results of a soil profile test shall supercede the results of any percolation test completed in the same proposed absorption field area.

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.

(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 785:45 Oklahoma's Water Quality Standards.

252:616-11-5. Recordkeeping

(a) **Records.** Maintain the following land application records:

(1) location, day and hour land application began and ended, and the method of application;

(2) analytical data, volume and source(s) of wastewater or sludge applied;

(3) loading rates;

(4) weather conditions during the application period;

(5) type of crop, grass or vegetation grown on site;

(6) pH of wastewater at beginning of application, or weekly if application exceeds seven consecutive days; and

(7) monitoring records, including the date, time and exact place of the sampling or measurement, the name of the sampler, when analysis began, the name of the certified laboratory and the analytical results.

(8) In the case of dust suppression (OAC 252:616-11-6), the following records must be maintained:

(A) location, day and hour land application began and ended, and the method of application;

(B) volume and source(s) of wastewater applied; and

(C) weather conditions during the application period.

(b) **Reporting to DEQ.** The owner or operator shall submit reports of monitoring and land application records by month on a quarterly basis. The quarterly reports will be due on or before the last working day of the month following the close of each quarter (i.e., April, July, October and January). Monitoring information shall be submitted to the DEQ on self-monitoring report (SMR) forms or other forms provided or approved by the DEQ.

(c) **Notice of changes.** An owner or operator shall give advance notice to the DEQ of any change in sludge or wastewater source(s), treatment or characteristics, method(s) of land application, or the addition of any specific land application site not previously approved in his/her permit. Such change may require a major modification of the permit.

252:616-11-6. Dust Suppression

(a) **Wastewater usage.** Class III wastewater, where the pollutant of concern is TSS, can be used 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.

(b) **Restrictions.** No Class III wastewater can be used for dust suppression during periods of precipitation or when soil is saturated or frozen. Runoff of wastewater used for dust suppression is prohibited.

(c) **Rule exemptions.** Wastewater land applied for dust suppression under this section is exempted from certain provisions of this rule as follows:

(1) haul roads are not required to be fenced or contain signage, unless other safety or environmental circumstances dictate otherwise (OAC 252:616-5-1(c)).

(2) haul roads are not required to have groundwater monitoring conditions (OAC 252:616-5-4).

[OAR Docket #05-814; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 619. OPERATION AND MAINTENANCE OF NON-INDUSTRIAL TOTAL RETENTION LAGOON SYSTEMS AND LAND APPLICATION

[OAR Docket #05-815]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
252:619-1-1. [NEW]
252:619-1-2. [NEW]
252:619-1-3. [NEW]
252:619-1-4. [NEW]
252:619-1-5. [NEW]
Subchapter 3. Operation and Maintenance [NEW]
252:619-3-1. [NEW]
252:619-3-2. [NEW]
252:619-3-3. [NEW]
Subchapter 5. Closure Requirements [NEW]
252:619-5-1. [NEW]
252:619-5-2. [NEW]

AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-6-402

DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
This rulemaking clarifies and consolidates all maintenance and operation rules applying to non-industrial total retention lagoon systems, with or without land application sites, into one set of rules separate from the more complex

rules that apply to discharging wastewater treatment facilities. Currently, the rules dealing with the operation and maintenance of these facilities are located in three separate Chapters of Title 252 of the Oklahoma Administrative Code.

CONTACT PERSON:

Please send written comments to David Freede at david.freede@deq.state.ok.us (e-mail) or (405) 702-6100 (phone). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:619-1-1. Purpose and authority

(a) **Purpose.** This Chapter establishes the operating and closure requirements for total retention lagoon systems that:

(1) are permitted or qualify to be permitted under Oklahoma Administrative Code (OAC) 252:656; and

(2) are not classified as a "small public sewage system" as defined in 27A O.S. § 2-6-101(8).

(b) **Authority.** This Chapter is authorized by 27A O.S. §§ 2-6-101 through 2-6-105, and 27A O.S. §§ 2-6-401 through 2-6-403.

(c) **Applicability.** The rules in this Chapter apply to any person or entity that owns, operates and/or has been permitted to construct a total retention lagoon system.

252:619-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 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:

"Bypass" means the intentional or unintentional diversion of wastes or wastewater from any portion of a total retention lagoon system.

"Cell" means an individual basin of a total retention lagoon system.

"Collection system" means pipelines or conduits, manholes, pumping stations, force mains and all other structures used to collect and conduct wastewater to a total retention lagoon.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Dike" means a bank, usually composed of earth, which is constructed to control or confine wastewater within a lagoon.

"Discharge" means any intentional or unintentional release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, overflowing, 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.

"Domestic wastewater" means wastewater that generally originates as human waste from certain activities including using toilet facilities, washing, bathing, preparing foods and washing laundry.

"Freeboard" means the vertical distance from the surface water level in the lagoon to a point that is even with the top of the dike.

"Lagoon" means a soil or lined basin, either below or above ground level, that is designed, maintained and operated to store, recycle and/or treat municipal/domestic wastewater.

"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 that is designed, constructed and installed in a lagoon and which has appropriate chemical and physical properties to control the seepage or release of wastes and wastewater from the lagoon.

"Municipal wastewater" means wastewater originating from a community that is composed primarily of domestic wastewater.

"Operator" means the individual who is properly certified by DEQ and who is responsible for the maintenance and operation of a total retention lagoon system.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity whatsoever.

"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 non-industrial wastewater lagoon that is designed and constructed without a discharge structure. A lagoon that was originally designed and constructed to discharge but has since had the discharge structure permanently sealed may be considered a total retention lagoon.

"Total retention lagoon system" includes the collection system, the total retention lagoon and the land application site.

252:619-1-3. Permit requirements

Pursuant to OAC 252:656, permits are required for the construction or modification of any non-industrial wastewater total retention lagoon system.

252:619-1-4. General requirements for total retention lagoon systems

(a) **Operational requirements.** The permittee shall ensure that the total retention lagoon system is operated in compliance with the terms of the DEQ-issued construction permit and the requirements of this Chapter. When in conflict, the terms of the permit shall supersede the requirements of this Chapter.

(b) **Unauthorized wastes.** The permittee shall take reasonable measures to prevent the introduction of unauthorized industrial wastewater, hazardous substances, chemicals or wastes into the total retention lagoon system.

(c) **Protection of potable water supplies.** The permittee shall prevent cross-connections between wastewater and potable water supplies.

(d) **Discharges prohibited.** The permittee shall operate and maintain the total retention lagoon system so that no part of the system bypasses or discharges wastes or wastewater. All such bypasses and/or discharges shall be considered a violation of this Chapter and be subject to enforcement as an unpermitted discharge to waters of the State in violation of the Oklahoma Pollutant Discharge Elimination System Act.

(1) **Reporting requirement.** The permittee shall ensure that any and all bypasses and/or discharges from a total retention lagoon system are reported to DEQ at (800) 522-0206 within 24-hours of the incident and that a completed and signed DEQ Form 605-011 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident.

(2) **Required response.** Whenever a bypass or discharge occurs, the permittee shall ensure that immediate action is taken to stop, contain, clean up and prevent recurrence of the bypass or discharge.

(e) **Certified operator required.** The permittee shall ensure that an operator, who is certified pursuant to OAC 252:710 to operate that size and type of total retention lagoon system, is employed to operate the total retention lagoon system.

(f) **Monthly operating report.** The permittee shall complete a DEQ Form 619-001 "Total Retention Lagoon Monthly Operation Report" ("MOR") each month. The permittee shall ensure that the MOR is kept current, is retained for three (3) years and is made available for review upon request by DEQ. Each MOR shall include:

(1) the estimated monthly flow to the total retention lagoon;

(2) the size of the population served by the total retention lagoon system;

(3) the date of each site visit to the total retention lagoon system;

(4) any maintenance performed on the total retention lagoon system; and

(5) the results of any voluntary or DEQ-ordered sampling and analyses of the wastewater in the total retention lagoon system.

(g) **Additional reporting and/or sampling.** DEQ may require additional reporting and/or sampling in any administrative order, closure plan, or other official document issued by DEQ.

(h) **Use of certified laboratories.** All laboratory analyses required to be conducted pursuant to this Chapter shall be performed by laboratories certified by DEQ.

252:619-1-5. Annual fees for total retention lagoon systems

(a) **Fee.** The permittee of a total retention lagoon system shall submit an annual fee to DEQ. The annual fee shall be in accordance with the following:

(1) Population Range 0-100 - $210

(2) Population Range 101-500 - $235

(3) Population Range 501-1,000 - $410

(4) Population Range 1,001 - 5,000 - $710

(5) Population Range 5,001+ - $810

(b) **Due date.** The permittee shall submit payment of the fee within thirty (30) days of receipt of an invoice mailed by DEQ.

SUBCHAPTER 3. OPERATION AND MAINTENANCE

252:619-3-1. Collection systems serving total retention lagoons

(a) **Maintenance.** The permittee shall maintain the structural integrity of all parts of the collection system and maintain it in good working order.

(b) **Connections.** The permittee shall maintain the integrity of the collection system by:

(1) inspecting all new connections of private service lines to the collection system; and

(2) restricting new private service line connections to those serving one piece of property.

(c) **Erosion control.** The permittee shall provide erosion protection for all parts of the collection system located in or near waterways or flood plains.

(d) **Pump stations.** The permittee shall ensure that pump stations are properly maintained and operated by doing the following:

(1) Securing pump stations to prevent unauthorized access.

(2) Maintaining the pumps in working condition.

(3) Keeping the screens free of debris to prevent clogging.

(4) Maintaining the required alarms in working order.

(5) Maintaining the required back-up generators and/or portable engine driven pumps in working order.

(6) Maintaining a complete set of operational instructions, emergency procedures and maintenance schedules.

252:619-3-2. Total retention lagoons

(a) **Erosion control.** The permittee shall prevent erosion of the lagoon by:

(1) Maintaining a 1:3 slope on the inner and outer dikes of the lagoon, unless permitted otherwise;

(2) Using soil, gravel, concrete pads, shallow-root vegetation or other methods of erosion control as needed;

(3) Removing trees and deep-root vegetation from the dikes and bottom of the lagoon in a timely manner to maintain the integrity and stability of the lagoon;

(4) Protecting the inner dikes from wave action;

(5) Protecting the outer dikes from stormwater runoff and floodwaters;

(6) Protecting the dikes from burrowing animals; and

(7) Repairing any damage promptly.

(b) **Freeboard.** The permittee shall ensure that the lagoon has a minimum of three feet (3') of freeboard, unless otherwise specified in the permit.

(c) **Seepage.** The permittee shall, at all times, maintain the integrity of the liner or seal of the total retention lagoon to prevent seepage in excess of five hundred gallons per acre per day (500 gal/acre/day). No action shall take place during the

use, maintenance, or operation of the lagoon that would destroy or diminish the effectiveness of any liner or seal, or increase the permeability of the liner or seal. Whenever seepage in excess of five hundred gallons per acre per day (500 gal/acre/day) from the lagoon is suspected or discovered, the permittee shall ensure that the discharge is reported to DEQ at (800) 522-0206 within 24-hours of the incident and that a completed and signed DEQ Form 605-011 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident.

(d) **Influent lines.** The permittee shall maintain influent lines to minimize short-circuiting by terminating influent lines at the center of the cell or a point at least one hundred feet (100') from the inside toe of any dike.

(e) **Wastewater depth control structures.** The permittee shall maintain control structures so that they properly control the wastewater depth in cells and route wastewater through the system.

(f) **Piping.** The permittee shall take steps to prevent turtles from clogging lagoon piping.

(g) **Flow measurement.** The permittee shall maintain flow measurement devices in proper working order.

(h) **Treatment.** The permittee shall operate and maintain the lagoon to produce optimum treatment results.

(i) **Fencing.** The permittee shall prevent unauthorized access to the lagoon by maintaining a fence around the lagoon. The fence may not interfere with the wind action to the lagoon's surface or shade the lagoon. Fences must have a lockable gate and must not obstruct maintenance vehicles or equipment. When the lagoon is located within three hundred fifty feet (350') of existing or platted residential or recreational areas, the permittee shall ensure that the lagoon is surrounded by a 6-foot high woven wire fence or equivalent.

(j) **Signs.** The permittee shall maintain a sign near or on the fence on each side of the lagoon site that designates the nature of the facility and advises against trespassing.

(k) **Wind action.** The permittee shall prevent any obstructions to wind action of the lagoon by:

(1) removing trees, weeds, cattails, and all other obstructions whenever they appear on or around the dikes or in the lagoon itself; and

(2) mowing the grass around the lagoons and on the dikes frequently enough to prevent the development of any obstructions to wind action.

(l) **Access road.** The permittee must maintain the access road to the lagoon so that it is passable during all weather conditions.

(m) **Other maintenance requirements.** The permittee shall maintain all structures of the lagoon in proper working order.

(n) **Septic conditions prohibited.** The permittee shall operate and maintain the total retention lagoon so that it does not become septic. If a lagoon becomes septic, the permittee shall take immediate steps to correct the condition without violating DEQ rules.

(o) **Vector control.** The permittee shall control vectors. In particular, mosquitoes and flies shall be controlled by:

(1) Maintaining an adequate lagoon depth;

(2) Preventing obstructions to wind action; and

(3) Taking steps to correct septic conditions.

(p) **Surfactants.** The use of surfactants or other chemicals or additives that would increase the seepage rate through a lagoon bottom is specifically prohibited.

252:619-3-3. Land application sites serving total retention lagoons

(a) **Operation and maintenance.** The following operation and maintenance requirements shall apply to land application sites serving total retention lagoons:

(1) **Fencing.** The permittee shall prevent unauthorized access to the land application site by maintaining the required fencing around the site. Public use areas where wastewater is disinfected prior to land application are exempt from the fencing requirements.

(2) **Signs.** The permittee shall maintain a sign, which describes the nature of the facility and advises against trespassing, on or near the fence on each side of the land application site. Public use areas where wastewater is disinfected prior to land application are exempt from the signage requirements.

(3) **Legal access to site.** The permittee shall only land apply wastewater to sites for which the permittee has legal access to the property for that purpose.

(4) **Public use area.** The permittee shall ensure that wastewater is not applied to a public use area that has a *high potential* for skin to ground contact (e.g. football field). The permittee shall ensure that wastewater applied to a public use area that has a *low potential* for skin to ground contact (e.g. golf course) is:

(A) disinfected before application by maintaining a detectable chlorine residual; and

(B) applied during times when the public is not present.

(5) **Equipment maintenance.** The permittee shall maintain all land application equipment in working order.

(b) **Restrictions.** The permittee shall not land apply wastewater:

(1) from the cell that receives raw sewage;

(2) from any cell other than the one specified in the permit;

(3) to any food crop that may be consumed raw;

(4) to crops such as corn, wheat and oats, less than thirty (30) days before harvest;

(5) at rates that allow a discharge from the permitted land application site;

(6) within one hundred feet (100') of the permitted boundary of the site;

(7) at a rate that exceeds the nitrogen and phosphorus rates for the crop grown at the site or that results in phytotoxicity;

(8) that has a dissolved oxygen concentration of less than 2.0 mg/*l*;

(9) in areas in which 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;

(10) during periods of precipitation or while the soil is saturated or frozen; and/or

(11) on land having a slope greater than five percent (5%) unless erosion or runoff controls are implemented, but in no case on land with greater than ten percent (10%) slope.

(c) **Records.** The permittee must record on the DEQ Form 619-001 "Total Retention Lagoon Monthly Operation Report" ("MOR") the following information:

(1) Location, day and hour land application began and ended;

(2) Method of application;

(3) Volume of wastewater applied;

(4) When the conditions of the site require that the wastewater be disinfected before application, the chlorine residual of the wastewater applied;

(5) Weather conditions during the application period;

(6) Type of crop, grass or vegetation grown at the land application site; and

(7) If special analytical testing is required as a condition of the permit or an Administrative Order, the results of the analytical testing, including the name of the individual who collected the samples, when the analysis began, and the name of the certified laboratory.

SUBCHAPTER 5. CLOSURE REQUIREMENTS

252:619-5-1. Closure of total retention lagoons

(a) **Timing of closure.** Within six (6) months of permanently taking a total retention lagoon out of service, unless an extension is granted by DEQ, the permittee shall close the lagoon according to the requirements of this subchapter.

(b) **Closure plan.** The permittee shall submit a closure plan detailing the schedule of proposed closure activities to DEQ ninety (90) days prior to beginning closure activities. The closure plan must receive approval from DEQ prior to the permittee beginning closure activities. At a minimum, the closure plan must include:

(1) A description of how the wastewater from lagoon will be disposed;

(2) A description of how the sludge will be disposed;

(3) A description of final grading and erosion control;

(4) A description of how unauthorized discharges of wastewater and sludge will be prevented during closure activities;

(5) A time schedule indicating:

(A) the major closure activities;

(B) the approximate time to complete each activity; and

(C) the estimated date of final completion of all closure activities; and

(6) The name, address, and telephone number of all the owners of record of the land upon which the lagoon is located.

(c) **Closure Requirements.** The following are the closure requirements:

(1) **Wastewater.** Wastewater from the lagoon must be either:

(A) land applied at a site permitted for the land application of wastewater; or

(B) disposed of at another permitted wastewater treatment facility.

(2) **Sludge.** Sludge from the lagoon must be measured and if the average sludge thickness in the lagoon:

(A) exceeds six (6) inches, the sludge must be removed from the lagoon and either land applied or disposed of in a permitted landfill. Land application will require the approval by DEQ of a Sludge Management Plan pursuant to OAC 252:606. Disposal in a landfill must meet the requirements of OAC 252:515.

(B) is six (6) inches or less, the sludge does not need to be removed from the site.

(d) **Discharges prohibited.** Under no circumstance may wastewater or sludge be:

(1) discharged to the waters of the State;

(2) allowed to flow or be carried to adjacent properties; or

(3) be disposed at any site not permitted by DEQ for that purpose.

(e) **Wastewater/sludge characterization.** When requested by DEQ, the permittee must provide a chemical analysis of representative sample(s) of the contents of the lagoon.

(f) **Additional requirements.** DEQ may require continuing monitoring, sampling, and reporting as deemed necessary.

(g) **Certificate of closure.** The permittee shall submit to DEQ written certification that the lagoon was closed in accordance with the approved closure plan within forty-five (45) days of completing the closure of the lagoon.

252:619-5-2. Closure of land application sites associated with total retention lagoons

(a) **Closure.** A specific land application site may be closed at any time by the permittee or by requirement of DEQ.

(b) **Notice.** The permittee shall submit written notice of the proposed closure of the land application site to DEQ at least ninety (90) days prior to beginning closure activities.

(c) **Remediation plan.** When site-specific testing and monitoring indicates the presence of pollution or deterioration of a site, DEQ will require the permittee to submit, receive approval of and perform a remediation plan.

[OAR Docket #05-815; filed 5-6-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 621. NON-INDUSTRIAL FLOW-THROUGH AND PUBLIC WATER SUPPLY IMPOUNDMENTS ~~AND~~ INCLUDING LAND APPLICATION

[OAR Docket #05-816]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:621-1-1. [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*
DATES:
Comment period:
December 15, 2004 through January 18, 2005
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2005
Final adoption:
May 6, 2005
Effective:
June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department proposes to amend the title and purpose of this chapter to reflect the proposed adoption of a new chapter of rules, OAC 252:619. OAC 252:619, if adopted, will apply to all total retention, non-industrial surface impoundments. Provided OAC 252:619 is adopted, OAC 252:621 will now apply to other impoundments, specifically, non-industrial flow-through impoundments and public water supply impoundments as well as the land application of wastewater from said impoundments.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:621-1-1. Purpose

This ~~chapter~~ Chapter establishes the operating and closure requirements for all non-industrial flow-through and public water supply surface impoundments ~~that have greater then 9 residential connections or received 5,000 gallons per day or more of flow~~ and land application of wastewater from said impoundments. This Chapter is authorized by 27A O.S. §§ 2-6-101 through ~~2-6-106 and~~ 2-6-105, §§ 2-6-401 through 2-6-403 and § 2-6-501.

[OAR Docket #05-816; filed 5-6-05]

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

[OAR Docket #05-817]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:631-1-3. [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*
DATES:
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Effective:
June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 40, Parts 141 and 143 of the Code of Federal Regulations as published on July 1, 2004
Incorporating rules
252:631-1-3
Availability:
From the contact person listed below.
ANALYSIS:
The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2004.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma

City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. INTRODUCTION

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

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2002~~ 2004, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #05-817; filed 5-6-05]

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

[OAR Docket #05-818]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:690-1-4. [AMENDED]
Subchapter 3. Point Source Discharges
252:690-3-11. [AMENDED]
252:690-3-14. [AMENDED]
252:690-3-26. [AMENDED]
252:690-3-29. [AMENDED]
252:690-3-34. [AMENDED]
252:690-3-41. [AMENDED]
252:690-3-42. [AMENDED]
Appendix B. Priority and Nopriority Pollutants with Numerical Criteria Requiring Resonable Potential Screening [REVOKED]
Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [NEW]
AUTHORITY:
Water Quality Standards Implementation Plan, 27A O.S. § 1-1-202; Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*
DATES:
Comment period:
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March 10, 2005
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June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
Title 40 of the Code of Federal Regulations, Parts 260, 261 263, 264, 265, 266, 268, 270, 273 and 279, as published on July 1, 2004
Incorporating Rules:
252:690-1-4
Availability:
From the contact person listed below
ANALYSIS:
The Department proposes to update its rules concerning the following: amending the date of the incorporation by reference of certain federal regulations, the change updates the publication date of the federal rules to July 1, 2004; amending the "incorporation by reference" rules; amending the procedure for calculating a 7Q2 to allow for alternative methods to calculate; amending background monitoring requirements; amending ammonia monitoring requirements; amending the date of publication of certain Whole Effluent Toxicity (WET) guidance documents previously incorporated by reference; amending test duration for WET tests; removing the diazinon alternative for WET testing; amending how and when WET testing frequency may be reduced; and correcting a typographical error in an appendix.
CONTACT PERSON:
Please send written comments to Shellie Chard-McClary (e-mail: shellie.chard-mcclary@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-8100, fax (405) 702-8101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. INTRODUCTION

252:690-1-4. Incorporation of USEPA regulations by reference

~~Federal~~ The following federal regulations at 40 CFR, as published on July 1, 2004, are incorporated by reference ~~in the following DEQ rules also apply to~~ and applicable to this Chapter:

(1) **OAC 252:205 (Hazardous Waste Management).** 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(A) **Part 260.** Hazardous Waste Management System: General, except 260.20 through 260.22.

(B) **Part 261.** Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(C) ~~262.42(a)(2 (e)~~ 262.42(a)(2)(e).

(D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

(i) 264.1(f)
(ii) 264.149
(iii) 264.150
(iv) 264.301(l)
(v) Part 264 Appendix VI

(F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

(i) 265.1(c)(4)
(ii) 265.149
(iii) 265.150

(G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

(H) **Part 268.** Land Disposal Restrictions, except:

(i) 268.5
(ii) 268.6
(iii) 268.10
(iv) 268.11
(v) 268.12
(vi) 268.13
(vii) 268.42(b)
(viii) 268.44(a) through (g)
(ix) 268.44(m) through (p).

(I) **Part 270.** Permit Programs, except 270.14(b)(18).

(J) **Part 273.** Universal Waste Rule.

(K) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."

(2) **OAC ~~252:605~~ 252:606 (Discharge Standards)**

(A) Part 116 (Hazardous Substances List)

(B) Part 117 (Reportable Quantities for Hazardous Substances)

(C) The following from PART 122 (NPDES PERMIT REGULATIONS):

(i) 122.2 - (definitions)
(ii) 122.24 - (concentrated aquatic animal production facilities)
(iii) 122.25 - (aquaculture projects)
(iv) 122.26 - (stormwater discharges)
(v) 122.27 - (silviculture)
(vi) 122.28 (a) and (b) - (general permits)
(vii) 122.29 - (new sources and new dischargers)
(viii) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
(ix) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
(x) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
(xi) 122.41 - (permit conditions)
(xii) 122.42 - (conditions for specified categories of permits)
(xiii) 122.43 - (establishing permit conditions)
(xiv) 122.44 - (establishing permit limitations, standards and other conditions)
(xv) 122.45 - (calculating permit conditions)
(xvi) 122.46 - (permit duration)
(xvii) 122.47 (a) - (schedules of compliance)
(xviii) 122.48 - (monitoring requirements)
(xix) 122.50 - (disposal into wells)
(xx) 122.61 - (permit transfer)
(xxi) 122.62 - (permit modification)
(xxii) 122.63 - (minor modifications of permits)
(xxiii) 122.64 - (permit termination)
(xxiv) Appendices A through J

(D) The following from PART 125 (criteria and standards for NPDES):

(i) Subpart A (technology-based treatment),
(ii) Subpart B (criteria for aquaculture projects),
(iii) Subpart D (fundamentally different factors),
(iv) Subpart H (alternative effluent limitations),
(v) Subpart I (cooling water intakes), and
(vi) Subpart L (disposal of sewage sludge under CWA 405)

(E) ~~40 CFR~~ Part 129 (Toxic Pollutant Effluent Standards)

(F) ~~40 CFR~~ Part 136 (testing and laboratory)

(G) ~~40 CFR~~ Sections 401-471 (Effluent Guidelines 7 and Standards)

(H) ~~40 CFR~~ Section 110.6 (notice of oil discharge)

(I) ~~40 CFR~~ Part 302 (CERCLA exemption from NPDES permits)

(J) The following Sections from Part 503, Subpart A (General Provisions):

(i) 503.1 (Purpose and applicability)
(ii) 503.2 (Compliance period)
(iii) 503.3 (Permits and direct enforceability)
(iv) 503.4 (Relationship to other regulations)
(v) 503.5 (Additional or more stringent requirements)
(vi) 503.6(a)-(e),(g)-(j) (Exclusions)
(vii) 503.7 (Requirement for a person who prepares biosolids)
(viii) 503.8 (Sampling and analysis)
(ix) 503.9 (General definitions)

(K) The following Sections from Part 503, Subpart B (Land Application):
(i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(ii) 503.11 (Special definitions)
(iii) 503.12 (General requirements)
(iv) 503.13 (Pollutant limits)
(v) 503.14 (Management practices)
(vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
(vii) 503.16(a) (Frequency of monitoring)
(viii) 503.17(a) (Recordkeeping)
(ix) 503.18 (Reporting)
(L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
(i) 503.30 (Scope)
(ii) 503.31 (Special definitions)
(iii) 503.32(a), (b) (Pathogens)
(iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)
(M) The following Sections from Part 503 Subpart E (Incineration)
(i) 503.40 (Applicability)
(ii) 503.41 (Special definitions)
(iii) 503.42 (General requirements)
(iv) 503.43 (Pollutant (Metal) limits)
(v) 503.44 (Operational standard - total hydrocarbons)
(vi) 503.45 (Management practices)
(vii) 503.46 (Frequency of monitoring)
(viii) 503.47 (Recordkeeping)
(ix) 503.48 (Reporting)
(N) The following Appendices from Part 503:
(i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
(ii) Appendix B (Pathogen treatment processes)
(O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

(3) **OAC 252:611 (General Water Quality)** ~~40 CFR~~ Part 130 (Water Quality Planning and Management)

~~(4) **OAC 252:648 (Land Application of Biosolids)**~~
~~(A) The following Sections from Part 503, Subpart A [General Provisions]:~~
~~(i) 503.1 [Purpose and applicability]~~
~~(ii) 503.2 [Compliance period]~~
~~(iii) 503.3 [Permits and direct enforceability]~~
~~(iv) 503.4 [Relationship to other regulations]~~
~~(v) 503.5 [Additional or more stringent requirements]~~
~~(vi) 503.6(a) (e),(g) (j) [Exclusions]~~
~~(vii) 503.7 [Requirement for a person who prepares biosolids]~~
~~(viii) 503.8 [Sampling and analysis]~~
~~(ix) 503.9 [General definitions]~~
~~(B) The following Sections from Part 503, Subpart B [Land Application]:~~
~~(i) 503.10(a),(b)(1)&(2),(e),(f),(g) [Applicability]~~
~~(ii) 503.11 [Special definitions]~~
~~(iii) 503.12 [General requirements]~~
~~(iv) 503.13 [Pollutant limits]~~
~~(v) 503.14 [Management practices]~~
~~(vi) 503.15 [Operational standards - pathogens and vector attraction reduction]~~
~~(vii) 503.16(a) [Frequency of monitoring]~~
~~(viii) 503.17(a) [Recordkeeping]~~
~~(ix) 503.18 [Reporting]~~
~~(C) The following Sections from Part 503, Subpart D [Pathogens and Vector Attraction Reduction]:~~
~~(i) 503.30 [Scope]~~
~~(ii) 503.31 [Special definitions]~~
~~(iii) 503.32(a),(b) [Pathogens]~~
~~(iv) 503.33(a), (b)(1) (11) [Vector attraction reduction]~~
~~(D) The following Sections from Part 503 Subpart E [Incineration]~~
~~(i) 503.40 [Applicability]~~
~~(ii) 503.41 [Special definitions]~~
~~(iii) 503.42 [General requirements]~~
~~(iv) 503.43 [Pollutant (Metal) limits]~~
~~(v) 503.44 [Operational standard - total hydrocarbons]~~
~~(vi) 503.45 [Management practices]~~
~~(vii) 503.46 [Frequency of monitoring]~~
~~(viii) 503.47 [Recordkeeping]~~
~~(ix) 503.48 [Reporting]~~
~~(E) The following Appendices from Part 503:~~
~~(i) Appendix A [Procedure to determine the annual whole biosolids application rate for a biosolids]~~
~~(ii) Appendix B [Pathogen treatment processes]~~

(~~5~~ 4) **OAC 252:652 (Underground Injection Control).** The following apply in their entirety as they apply to the underground injection control program:
(A) Part 144 (Underground Injection Control Program)
(B) Part 145 (State UIC Program Requirements)
(C) Part 146 (Underground Injection Control Program: Criteria and Standards)
(D) Part 147 (State Underground Injection Control Programs)
(E) Part 148 (Hazardous Waste Injection Restrictions)

(~~6~~ 5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

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 785:46-1-6 (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.

252:690-3-14. Requirements specific to numeric criteria for toxic substances for the Fish and Wildlife propagation beneficial use

(a) **Background assumed zero.** The DEQ will assume zero background levels for direct discharges of once through cooling water.

(b) **Hardness or pH dependent criteria.** Where a criterion for a pollutant is hardness- or pH-dependent, the DEQ will add hardness or pH monitoring, as appropriate, to the background monitoring requirements.

(c) **Representative of low flow conditions in streams.** The permittee must collect background samples as close to low flow conditions as possible in streams.

(d) **Background data from a previous permit.** The DEQ will not use background data referenced in the fact sheet or statement of basis of a previous permit unless the data is defensible analytical data.

(e) **Background monitoring.** Where toxicity-based effluent limitations for a substance are established in a permit and a complete background data set meeting the requirements of OAC 252:690-3-11 is not available, background monitoring of the limited substance is required. This requirement does not apply where the background must be considered equal to zero in accordance with OAC 252:690-3-14(a) where $Q^* \geq 0.333$, or where the 7Q2 of the receiving stream is assumed to be 1 cfs.

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 3/week during the first year of a permit. After one year at this monitoring frequency, permittees may request that the DEQ grant an ammonia monitoring frequency reduction to 1/week if the highest daily maximum level reported during the first year is no greater than 1.5 times the toxicity-based MAL and there were no exceedances of either the monthly average limit or the daily maximum limit for ammonia during that period. If WET test failures attributable to ammonia are experienced at any time during the term of a permit, the ammonia monitoring frequency must be continued at or be returned to 3/week.

252:690-3-29. WET testing methods

The specific tests and test organisms used for determining whole effluent toxicity include:

(1) **Acute test/*D. pulex*** ~~or *C. dubia*~~**.** Acute 48-hour static renewal toxicity test using *Daphia pulex* ~~or *Ceriodaphnia dubia*~~ (Method 2021.0) as described in ~~Fourth Edition,~~ EPA publication no. ~~600/4-90/027F (August 1993)~~ 821-R-02-012 (October 2002),Fifth Edition, Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms ~~or most recent version thereof~~.

(2) **Acute test/*P. promelas*.** Acute 48-hour static renewal toxicity test using *Pimephales promelas* (Method 2000.0) as described in ~~Fourth Edition,~~ EPA publication no. ~~600/4-90/027F (August 1993)~~ 821-R-02-012 (October 2002), Fifth Editon, Methods for Measuring the Acute

Toxicity of Effluent to Freshwater and Marine Organisms ~~or most recent version thereof~~.

(3) **Chronic test/*C. dubia*.** Chronic static renewal 7 day survival and reproduction test using *Ceriodaphnia dubia* (Method 1002.0), as described in ~~Third Edition, 600/4-91-002 (July 1994)~~ EPA publication no. 821-R-02-013 (October 2002), Fourth Edition, Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms ~~or most recent version thereof~~.

(4) **Chronic test/*P. promelas*.** Chronic static renewal 7 day larval survival and growth test using *Pimephales promelas* ~~fathead minnow~~ (fathead minnow) (Method 1000.0), as described in ~~Third Edition, EPA publication no. 600/4-91-002 (July 1994)~~ EPA publication no. 821-R-02-013 (October 2002), Fourth Edition, Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms ~~or most recent version thereof~~.

252:690-3-34. Test duration for WET tests

For acute tests the test duration is 48 hours and for chronic tests the test duration is ~~7 days~~ until 60% of the surviving females in the toxicity test control dilution (0% effluent) produce three broods or at the end of eight days, whichever comes first.

252:690-3-41. WET testing frequency and trial period

The minimum required WET testing frequency is once per quarter~~, except as specified in OAC 252:690-3-41(a)~~. Monitoring frequency reductions may be granted in accordance with OAC 252:690-3-42 after completion of a trial period~~ as described in OAC 252:690-3-41(b)~~.

~~(1) **Diazinon alternative.** Where diazinon toxicity reduction and elimination is used in a permit as an alternative to a WET limit for the *C. dubia* species, the WET testing frequency for *C. dubia* is once per month for the period April 1 through September 30 and a minimum of once per quarter for the period October 1 through March 31. Diazinon analysis on both influent and effluent samples is required concurrently with WET testing when this alternative is used.~~

~~(2)~~ **~~Trial period.~~** The length of the WET testing trial period will be established by the DEQ based on whether and to what degree a facility poses an increased toxicity risk due to the nature of its activities (e.g., accepting external waste streams, a history of WET test failures, or reported discharges of toxic compounds in toxic amounts). The minimum WET testing trial period is one year. The length of the WET testing trial period will be specified in the permit. If the DEQ determines that an increased toxicity risk so warrants, quarterly or more frequent testing may be required for the life of the permit.

252:690-3-42. WET testing frequency reductions after WET testing trial period

Permittees may request reduction of the WET testing frequency for the remaining term of the permit depending on the results of WET testing during the WET testing trial period. To qualify for a WET testing frequency reduction, the permittee must certify that tests submitted in fulfillment of its WET testing requirements during the WET testing trial period meet all test acceptability criteria set forth in OAC 252:690-3-38 and EPA WET test method documents. In addition the following apply:

(1) **WET limit established in permit.** Reductions in WET testing frequency are not allowed during the first five years of applicability of a WET limit. The DEQ may consider a reduced testing frequency when the permit is renewed, based on the WET testing results during the term of the then previous permit.

(2) **No test failure for ~~either~~ a species during WET testing trial period.** The DEQ may reduce the testing frequency for ~~the more sensitive test~~ a species to not less than once per six months~~ and may reduce the testing frequency for the less sensitive test species to once per year~~. If the monitoring frequency reduction is denied, the permittee must continue WET testing at a frequency of once per quarter for the affected species for the remaining life of the permit.~~ This provision does not apply to the use of the diazinon alternative as described in OAC 252:690-3-41(a) above.~~

(A) To be eligible, the permittee must:

(i) demonstrate no lethal or sublethal test failures for either test species during the WET testing trial period; and

(ii) certify in writing to the DEQ that it has fulfilled the test acceptability requirements set forth in OAC 252:690-3-38;

(B) The DEQ will either approve or deny the certification in writing within 90 days of receipt. The DEQ may deny the certification based on facility specific criteria if it finds that any of the permittee's WET test reports during the period for which certification is submitted:

(i) are substantively incomplete;

(ii) are in error regarding test acceptability criteria or statistical interpretation of results; or

(iii) were not received by the DEQ by the due date prescribed in the permit.

(3) **Test failure for either test species demonstrated during the WET testing trial period.** ~~If a test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species for the remaining life of the permit upon completion of the WET testing trial period. If a test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species until no sublethal effects are demonstrated for four consecutive quarters. Following this demonstration, the DEQ may reduce the testing frequency for the affected species to once per six months. The DEQ will reduce the testing frequency for the species not affected, if applicable, to not less than once per year for the remaining term of the permit, provided~~

~~the permittee submits the certification prescribed in OAC 252:690-3-42(b) for the unaffected species.~~

(A) If a lethal test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species for the remaining life of the permit upon completion of the WET testing trial period.

(B) If a sublethal test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species until no sublethal effects are demonstrated for four consecutive quarters. After demonstrating no sublethal effects for four quarters, the DEQ may reduce the testing frequency for the affected species to once per six months.

APPENDIX B. PRIORITY AND NOPRIORITY POLLUTANTS WITH NUMERICAL CRITERIA REQUIRING RESONABLE 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. OWRB will be notified of pollutants predicted to exceed NRWQC guidelines in order to evaluate the need for a state water quality criterion. 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.	STORET No.	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Metals, Cyanide and Total Phenols	Antimony, total	7440360	01097	60	♦	—	—	—	—
	Arsenic, total	7440382	01002	10	♦	♦	♦	♦	—
	Beryllium, total	7440417	01012	5	—	—	—	—	—
	Cadmium, total	7440439	01027	1	—	♦	♦	♦	—
	Chromium, total	7440473	01034	10	—	♦	♦	♦	—
	Copper, total	7440508	01042	10	—	♦	—	♦	—
	Lead, total	7439921	01051	5	—	♦	♦	♦	—
	Mercury, total	7439976	71900	0.2	♦	♦	♦	♦	—
	Nickel, total	7440020	01067	40	♦	♦	♦	—	—
	Selenium, total	7782492	01147	5	♦	♦	—	♦	—
	Silver, total	7440224	01077	2	—	♦	♦	♦	—
	Thallium, total	7440280	01059	10	♦	♦	♦	—	—
	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] OWRB-adopted numerical water quality criteria, OAC 785:45, 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 Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						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	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] OWRB-adopted numerical water quality criteria, OAC 785:45, 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 Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Acid Organics	2-Chlorophenol	95578	34586	10	♦	—	—	—	—
	2,4-Dichlorophenol	120832	34601	10	♦	—	—	—	—
	2,4-Dimethylphenol	105679	34606	10	♦	—	—	—	—
	4,6-Dinitro-o-cresol [2-Methyl-4,6-	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	10	—	—	—	—	—
	Pentachlorophenol	87865	39032	50	♦	♦	♦	—	—
	Phenol	108952	34694	10	♦	—	—	—	—
	2,4,6-Trichlorophenol	88062	34621	10	♦	—	—	—	—
Base/Neutral Organics	Acenapthene	83329	34205	10	♦	—	—	—	—
	Acenapthylene	208968	34200	10	—	—	—	—	—
	Anthracene	120127	34220	10	♦	—	—	—	—
	Benzidine	92875	39120	50	♦	—	—	♦	—
	Benzo(a)anthracene	56553	34526	10	♦	—	—	—	—
	Benzo(a)pyrene	50328	34247	10	♦	—	—	—	—
	Benzo(b)fluoranthene [3,4-	205992	34230	10	♦	—	—	—	—
	Benzo(ghi)perylene	191242	34521	20	—	—	—	—	—
	Benzo(k)fluoranthene	207089	34242	10	♦	—	—	—	—
	Bis (2-chloroethoxy) methane	111911	34278	10	—	—	—	—	—
	Bis (2-chloroethyl) ether	111444	34273	10	♦	—	—	—	—
	Bis (2-chloroisopropyl) ether	39638329	34283	10	♦	—	—	—	—
	Bis (2-ethylhexyl) phthalate	117817	39100	10	♦	—	—	—	—
	4-Bromophenyl phenyl ether	101553	34636	10	—	—	—	—	—
	Butylbenzyl phthalate	85687	34292	10	♦	—	—	♦	—
	2-Chloronapthalene	91587	34581	10	♦	—	—	—	—
	4-Chlorophenyl phenyl ether	7005723	34631	10	—	—	—	—	—
	Chrysene	218019	34320	10	♦	—	—	—	—
	Dibenzo(a,h)anthracene	53703	34556	20	♦	—	—	—	—
	1,2-Dichlorobenzene	95501	34536	10	♦	—	—	—	—
	1,3-Dichlorobenzene	541731	34566	10	♦	—	—	—	—

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.
[2] OWRB-adopted numerical water quality criteria, OAC 785:45, 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 Number	STORET Number	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	10	◆	—	—	—	—
	3,3'-Dichlorobenzidine	91941	34631	50	◆	---	---	---	---
	Diethyl phthalate	84662	34336	10	◆	---	---	---	---
	Dimethyl phthalate	131113	34341	10	◆	---	---	---	---
	Di-n-butyl phthalate	84742	39110	10	◆	---	---	---	---
	2,4-Dinitrotoluene	121142	34611	10	◆	---	---	---	---
	2,6-Dinitrotoluene	606202	34626	10	—	---	---	---	---
	Di-n-octyl phthalate	117840	34596	10	—	---	---	---	---
	1,2-Diphenylhydrazine (as Azobenzene)	122667	34346	20	◆	---	---	---	---
	Fluoranthene	206440	34376	10	◆	---	---	---	---
	Fluorene	86737	34381	10	◆	---	---	---	---
	Hexachlorobenzene	118741	39700	10	◆	—	◆	—	—
	Hexachlorobutadiene	87683	34391	10	◆	---	---	---	---
	Hexachlorocyclopentadiene	77474	34386	10	◆	---	---	---	---
	Hexachloroethane	67721	34396	20	◆	---	---	---	---
	Ideno(1,2,3-cd)pyrene	193395	34403	20	◆	---	---	---	---
	Isophorone	78591	34408	10	◆	---	---	---	---
	Napthalene	91203	34696	10	---	---	---	---	---
	Nitrobenzene	98953	34447	10	◆	---	---	---	---
	n-Nitrosodimethylamine	62759	34438	50	◆	---	---	---	---
	n-Nitrosodi-n-propylamine	621647	34428	20	◆	---	---	---	---
	n-Nitrosodiphenylamine	86306	34433	20	◆	---	---	---	---
	Phenanthrene	85018	34461	10	---	---	---	---	---
	Pyrene	129000	34469	10	◆	---	---	---	---
	1,2,4-Trichlorobenzene	120821	34551	10	◆	---	---	---	---
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	0.1	◆	◆	◆	---	---
	4,4'-DDE	72559	39320	0.1	◆	---	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.
[2] OWRB-adopted numerical water quality criteria, OAC 785:45, 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 Number	STORET No.	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Pesticides	4.4'-DDD	72548	39310	0.1	◆	---	---	—	---
	Dieldrin	60571	39380	0.1	◆	◆	◆	---	---
	alpha-Endosulfan	959988	34361	0.1	◆	◆	---	---	---
	beta-Endosulfan	3321365	34356	0.1	◆	◆	---	---	---
	Endosulfan sulfate	1031078	34351	0.1	◆	---	---	—	---
	Endrin	72208	39390	0.1	◆	◆	◆	◆	---
	Endrin aldehyde	7421934	34366	0.1	◆	---	---	—	---
	Heptachlor	76448	39410	0.05	◆	◆	◆	---	---
	Heptachlor epoxide	1024573	39420	0.05	◆	---	---	—	---
	Toxaphene	8001352	39400	5	◆	◆	---	◆	---
PCBs	PCB-1242		39496	1	—	---	---	—	---
	PCB-1254		39504	1	—	---	---	—	---
	PCB-1221		39488	1	—	---	---	—	---
	PCB-1232		39492	1	—	---	---	—	---
	PCB-1248		39500	1	—	---	---	—	---
	PCB-1260		39508	1	—	---	---	—	---
	PCB-1016		34671	1	—	---	---	—	---
	PCBs, total		04166	1	◆	◆	◆	—	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-2. Nonpriority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Nonpriority Pollutants	Ammonia	7664417	00610	---	---	[3]	---	---	---
	Barium	7440393	01007	---	---	---	---	♦	---
	Bis-chloromethyl ether	542881	34268	10	♦	---	---	---	---
	Chloride	16887006	00941	---	---	---			♦
	Chlorine	7782505	50060	---	---	[3]	---	---	---
	2-(2,4,5-Trichlorophenoxy) propionic acid [2,4,5-TP Silvex]	93721	39760	2	---	♦	---	♦	---
	2,4-Dichlorophenoxyacetic acid [2,4-D]	94757	39730	---	---	---		♦	---
	Chloropyrifos [Dursban]	2921882	81403	0.04	---	♦	---	---	---
	Demeton	8065483	39560	0.07	---	♦	---	---	---
	Detergents, total		---	---	---	---	---	♦	---
	Fluoride	16984488	00951	---	---	---	---	♦	---
	Guthion [Methyl azinphos]	86500	39580	0.03	---	♦	---	---	---
	Hexachlorocyclohexane	319868	77835	---	♦	♦	---	---	---
	Hexahydro-1,3,5-trinitro-1,3,5-triazine [RDX]		81364	140	---	♦	---	---	---
	Malathion	121755	39530	0.036	---	♦	---	---	---
	Manganese	7439965	01055	---	♦	---	---	---	---
	Methoxychlor	72435	39480	0.1	---	♦	---	♦	---
	Methylene blue active substances	61734	47021	---	---	---	---	♦	---
	Mirex	2385855	39755	0.07	---	♦	---	---	---
	Nitrate	14797558	00620	---	---	---	---	♦	---
	Nitrosamines		---	---	♦	---	---	---	---
	n-Nitrosodibutylamine	924163	---	---	♦	---	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.
[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.
[3] Ammonia and chlorine criteria apply to implementation of narrative toxicity criterion under OAC 785:45 and 40 CFR Part 122.44(d)(1)(vi).

Table B-2 (continued). Nonpriority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET No.	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Nonpriority Pollutants	n-Nitrosodiethylamine	55185	---	---	♦	---	---	---	---
	n-Nitrosopyrrolidine	930552	---	---	♦	---	---	---	---
	Parathion	56382	39540	0.033	---	♦	---	---	---
	Pentachlorobenzene	608935	77793	---	♦	---	---	---	---
	Phthalate esters (except butylbenzyl)		39117	---	---	---	---	♦	---
	Sulfate		00946	---	---	---	---	---	♦
	Total Dissolved Solids [TDS]		70300	---	---	---	---	---	♦
	1,2,4,5-Tetrachlorobenzene	95943	78028	---	♦	---	---	---	---
	2,4,5-Trichlorophenol	95954	81848	---	♦	---	---	---	---
	2,4,6-Trinitrotoluene		81360	69	---	♦	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-Z-99-001, April 1999.

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-3. WET Testing and WET Limit Parameters

Parameter			STORET No.	NRWQC Human Health	State Criteria			
					Aquatic Toxicity	Human Health	Raw Water	Agriculture
48-hour Acute LC_{50}, Static Renewal, Freshwater	*Daphnia pulex*	P/F survival	TIM3D	---	♦	---	---	---
		LC_{50} effluent concentration	TAM3D	---	♦	---	---	---
		% mortality in 100% effluent	TJM3D	---	♦	---	---	---
	Pimephales promelas	P/F survival	TIM6C	---	♦	---	---	---
		LC_{50} effluent concentration	TAM6C	---	♦	---	---	---
		% mortality in 100% effluent	TJM6C	---	♦	---	---	---
	WET Limit	LC_{50} > 100%	22414	---	♦	---	---	---
7-day Chronic NOEC, Static Renewal, Freshwater	*Ceriodaphnia dubia*	P/F survival	TLP3B	---	♦	---	---	---
		$NOEC_L$ (lethality)	TOP3B	---	♦	---	---	---
		% mortality in critical dilution	TJP3B	---	♦	---	---	---
		P/F reproduction	TGP3B	---	♦	---	---	---
		$NOEC_S$ (reproduction)	TPP3B	---	♦	---	---	---
		% CV	TQP3B	---	♦	---	---	---
	Pimephales promelas	P/F survival	TLP6C	---	♦	---	---	---
		$NOEC_L$ (lethality)	TOP6C	---	♦	---	---	---
		% mortality in critical dilution	TJP6C	---	♦	---	---	---
		P/F growth	TGP6C	---	♦	---	---	---
		$NOEC_S$ (growth)	TPP6C	---	♦	---	---	---
		% CV	TQP6C	---	♦	---	---	---
	WET Limit	$NOEC_L$ ≥critical dilution	22414	---	♦	---	---	---

[OAR Docket #05-818; filed 5-6-05]

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

[OAR Docket #05-819]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [AMENDED]
252:710-1-12. [AMENDED]
Subchapter 3. Certification [AMENDED]
252:710-3-31. [AMENDED]
252:710-3-32. [AMENDED]
252:710-3-37. [AMENDED]
Subchapter 5. Duties and Responsibilities [AMENDED]
252:710-5-53. [AMENDED]
252:710-5-57. [AMENDED]
252:710-5-58. [AMENDED]
252:710-5-59. [AMENDED]
Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [REVOKED]
Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [NEW]
Appendix B. Certificate Requirements (252:710-3-35) [REVOKED]
Appendix B. Certificate Requirements (252:710-3-35) [NEW]
AUTHORITY:
Environmental Quality Board and Waterworks and Wastewater Works Advisory Council; 27A O.S. §§ 2-2-101 and 2-2-201; 59 O.S. §§ 1103, 1104 and 1105.
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INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
This rulemaking is to revise and clarify the current operator certification rules. New provisions include a late payment for application fees, certification exception for certain laboratory operators, and adding a provision of classification due to the complexity of certain systems. Exemptions for certain operators of nontransient noncommunity water systems and retired operators are being revoked due to the expiration date of such exemption dates.
CONTACT PERSON:
Contact Chris Wisniewski at chris.wisniewski@deq.state.ok.us or (405) 702-8100 (phone) or 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:710-1-12. Certification fee schedule

(a) **Operators of waterworks or wastewater works.** Certification fees for operators of waterworks or wastewater works are:

(1) Application fee for certification - $40.00

(2) Certification renewal fee - $30.00

(3) Registration fee for helpers (per helper) - $15.00

(4) Renewal registration fee for helpers (per helper) - $15.00

(5) Reinstatement penalty - $5.00 per month for each month certification is expired.

(6) Late payment of application fee - $5.00 per month for each month the application fee is not received after a 120 day grace period from the date of the examination. After 180 days without payment of the application fee, the applicant must reapply and pass the validated exam. The $5.00 per month late fee will apply to all previously delinquent application fees 180 days after the effective date of this subsection.

(b) **Operators of laboratories owned by or associated with waterworks or wastewater works.** Certification fees for Operators of laboratories owned by or associated with waterworks or wastewater works are:

(1) Application fee for certification - $40.00

(2) Certification renewal fee - $30.00

(3) Reinstatement penalty - $5.00 per month for each month certification is expired.

(4) Late payment of application fee - $5.00 per month for each month the application fee is not received after a 120 day grace period from the date of the examination. After 180 days without payment of the application fee, the applicant must reapply and pass the validated exam. The $5.00 per month late fee will apply to all previously delinquent fees 180 days after the effective date of this subsection.

(c) **Nonrefundable.** Fees charged under this section are not refundable.

(d) **Nontransferable.** Fees may not be transferred from one applicant to another.

SUBCHAPTER 3. CERTIFICATION

252:710-3-31. Certificate required

(a) **General requirement.** The following shall hold certifications issued under the Act and this Chapter:

(1) All persons who make decisions regarding the daily operational activities of:

(A) a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water, including a nontransient noncommunity water system; or

(B) a wastewater system, wastewater treatment facility and/or collection system~~;~~.

(2) All persons who program or maintain telemetry/SCADA systems and also make process control/system integrity decisions.

(3) All laboratory operators who are in general supervision of waterworks/wastewater works laboratory control tests.

~~(4) The DEQ hereby grants a grace period for those persons who operate nontransient noncommunity water systems (NTNC), i.e., public water systems that are not a community water systems and that regularly serve at least 25 of the same persons over six months per year, including schools, day care centers, factories, restaurants and hospitals. Operators of NTNC water systems must be certified on or before July 1, 2002.~~

(b) **Exceptions.** The following exceptions apply:

(1) **Plumbers and contractors.** Plumbers and contractors are not required to obtain certification for construction, maintenance, or renovation of water/wastewater works systems. Plumbers licensed by the Oklahoma State Department of Health may also make connections to public water systems or lines or sewer systems or lines. All work performed shall be supervised and inspected by the responsible entity to ensure compliance with the Safe Drinking Water Act, OAC 252:656 and 27A O.S. § 2-6-101 *et seq.*

(2) **Noncommunity and minor systems.** Noncommunity or minor systems as defined in Chapter 631 are not required to have certified operators.

(3) **Small public sewage systems.** Public sewage systems as defined in 27A O.S. § 2-6-101(12) are not required to have certified operators.

(4) **Populations of 1,500 or less.** Certification is not required for laboratory operators of distribution/collection systems or chlorinated groundwater systems serving populations of 1,500 or less where chlorination is used only for disinfection or total retention lagoons serving populations of less than 1,500. If the DEQ determines that additional tests which must be performed by a certified laboratory operator are necessary, the laboratory operator must obtain the applicable certification or use the services of an associated laboratory.

252:710-3-32. Types of certifications

(a) **Class A - C.** Class A, B, and C operator certifications are available for:

(1) Waterworks Operator;

(2) Wastewater Works Operator;

(3) Waterworks Laboratory Operator; and

(4) Wastewater Works Laboratory Operator;

(b) **Class C.** Class C certification is available for Distribution and Collection Operator;

(c) **Class D.** Class D certifications are available for:

(1) Waterworks Operator;

(2) Wastewater Works Operator; and

(3) Distribution and Collection Technician~~; and~~.

~~(4) Temporary waterworks or wastewater works operator.~~

(d) **Technician.** The DEQ may give oral exams to Distribution and Collection Technicians who are unable to take written exams.

~~(e) **Retired.** Persons holding certifications classified as "retired" shall be acknowledged as "retired" under this Chapter until June 30, 2000, at which time their "retired" status expires and certifications may be renewed. The DEQ shall not grant "retirement" status to any persons under this Chapter.~~

(~~f~~e) **Temporary.** A person age eighteen (18) or older may apply for temporary certification as a waterworks or wastewater works operator within ten (10) days after being hired or appointed. A temporary certification is valid for one year from the date of employment and is not renewable. Temporary certification is available only to operators required to obtain a Class D certificate but who, because of time restrictions, have been unable to meet the training requirements. Temporary certification is not available to superintendents, assistant superintendents, supervisors, or managers of superintendents who make decisions regarding the daily operational activities of water/wastewater works.

252:710-3-37. Approved instructor.

The DEQ may establish special requirements for instructors of approved training courses.

(1) **Standard course.** To be an instructor of a standard course for certification of any type, a person must have at least a C Certification in the subject to be taught and have one of the following:

(A) have made at least 80% on the exam for the standard course to be taught; or

(B) have made at least 80% on exams at a higher type of certification than the course taught. Persons who were approved instructors before the effective date of this Chapter are not required to comply with this subsection for the level of instruction approved. To change approved instructor status to a higher level, compliance with this subsection is required.

(2) **Exemption.** A person who is approved as an instructor before July 1, 2002 pursuant to (1)(B) above, must take the appropriate exam before December 31, 2004 and meet or exceed the scores listed in (1)(A) or (1)(B) of this section.

(3) **Fees.** For any certified operator, retaking an exam at a class certification level already obtained, for the purposes of becoming an approved instructor, the application fee is waived for the initial time to take the exam. For any subsequent exams, the certified operator shall pay the application fee.

(4) **Exam Failure.** An applicant who fails to answer at least 80% of the questions correctly may not take the exam again for thirty (30) days.

(5) **Exam Review.** No instructor will be allowed to review the exam during the six-month period prior to taking the exam.

(6) **Instruction.** At least four (4) hours of documented instruction must be completed each certificate year to maintain approved instructor status. Each person must retake the exam at least once every four (4) years and obtain a score of 80% or above to retain certification as an approved instructor.

(7) **Renewal training class.** The teaching by an instructor of a renewal training class shall be deemed as compliance with the continuing education requirement located at 252:710-1-7(c) for the certificate year the class is taught.

SUBCHAPTER 5. DUTIES AND RESPONSIBILITIES

252:710-5-53. Laboratory operator

(a) All duties relating to the laboratory analysis of water quality samples from water treatment plants, groundwater systems, storage and distribution systems (including purchased-water systems) must be performed by or under the general supervision of a laboratory operator certified by the DEQ.

(b) Operators of laboratories owned by or associated with waterworks/wastewater works shall record the results of all laboratory analyses in a bound volume for each facility and shall date and sign each entry. Records shall be kept on file at the laboratory for inspection and review for ten (10) years for waterworks and three (3) years for wastewater works.

(c) Laboratory operator certification is not required for waterworks or wastewater works laboratory operators performing the minimum analyses required by rules of the Department for purchased water systems, groundwater systems using no treatment other than chlorination for disinfection, or for total retention lagoon facilities unless the Department has determined that additional laboratory tests, required to be performed by a certified laboratory operator, are necessary for proper operation.

252:710-5-57. Responsibility of owners

(a) Owners of waterworks or wastewater works shall:

(1) upon request, furnish the DEQ with the names, addresses and positions of all employees;

(2) advise the DEQ in writing within ten (10) days when ~~a~~ an operator begins or terminates employment;

(3) furnish the necessary equipment and materials for adequate maintenance and operation of the treatment plant, laboratory and supporting facilities;

(4) give operators a reasonable opportunity to obtain the necessary hours of training for required certification upgrades and renewals; and

(5) within ten (10) days after contracting with an associated laboratory for the analysis of its water quality samples, notify the DEQ in writing about whether:

(A) the laboratory is currently certified by the DEQ; and

(B) the laboratory will only be performing operational testing.

252:710-5-58. Distribution and collection operator

A person holding certification as a distribution and collection operator may perform all duties relating to the operation and maintenance of storage and distribution systems, including purchased-water systems and nontransient, noncommunity systems. A person holding certification as a distribution and collection operator may also perform all duties relating to the operation and maintenance of total retention lagoon systems and collections systems.

252:710-5-59. Distribution and collection technician

A person holding certification as a distribution and collection technician may perform all duties relating to the operation and maintenance of storage and distribution systems, including purchased-water systems and nontransient, noncommunity systems. A person holding certification as a distribution and collection technician may also perform all duties relating to the operation and maintenance of total retention lagoon systems and collection systems. All the duties must be performed under the direction and general supervision of an appropriately certified operator.

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [REVOKED]

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [NEW]

Classes	Laboratories	Waterworks	Wastewater works
Class A	Optional for laboratories using gas chromatography, mass spectrometry and atomic absorption or similar instrumentation plus requirements for Class B and C.	(1) Water treatment plants, distribution systems, or chlorinated groundwater systems serving populations greater than 50,000; and (2) All water treatment plants classified as an "A" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works serving populations greater than 50,000; and (2) All wastewater works classified as an "A" facility by complexity by the Operator Certification Section of the Department.
Class B	Required for supervision of bacteriological testing plus requirements for Class C.	(1) Water treatment plants, distribution systems or chlorinated groundwater systems serving populations between 15,000 and 50,000; and (2) All water treatment plants classified as an "B" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works serving populations between 15,000 and 50,000; and (2) All wastewater works classified as an "B" facility by complexity by the Operator Certification Section of the Department.
Class C	Required for supervision of process control testing. (1) Wastewater: BOD, TSS, pH, Residual Chlorine, COD, DO, Ammonia, Oil and Grease; (2) Water: pH, Residual Chlorine, Turbidity, Alkalinity, Hardness, Stability and Fluoride	(1) Water treatment plants, distribution systems, and chlorinated or nonchlorinated groundwater systems serving populations greater than 1,500 and less than 15,000; (2) Surface water treatment plants serving a population of 15,000 or less; and (3) Groundwater systems utilizing any form of chemical treatment other than chlorination for disinfection only; and (4) All water treatment plants classified as an "C" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works facilities serving populations between 1,500 and 15,000; and (2) Discharging wastewater facilities serving 15,000 or less; and (3) All wastewater works classified as an "C" facility by complexity by the Operator Certification Section of the Department.
Class D	None	Distribution systems or chlorinated groundwater systems serving populations of 1,500 or less.	Total retention lagoons serving populations of less than 1,500.

APPENDIX B. CERTIFICATE REQUIREMENTS (252:710-3-35) [REVOKED]

APPENDIX B. CERTIFICATE REQUIREMENTS (252:710-3-35) [NEW]

Table 1. WATERWORKS AND WASTEWATER WORKS OPERATORS CERTIFICATE REQUIREMENTS (252:710-3-35)

Classes	Experience[6]	Training[7]
Class A	Five years of waterworks or wastewater works operation including two years actual hands-on operating experience	200 hours of approved training, including at least 40 hours of DEQ approved courses in advanced treatment and managerial training or its approved equivalent[8]
Class B	Three years of waterworks or wastewater works operation including one year actual hands-on operating experience	100 hours of DEQ approved training or its approved equivalent
Class C	(a) For waterworks/wastewater works operators, one year of waterworks or wastewater works operation (b) For distribution/collection operators, one year of distribution/ collection operation	36 hours of DEQ approved training or its approved equivalent 36 hours of DEQ approved training or its approved equivalent
Class D	None	16 hours of approved training
Tech	None	8 hours of approved training

[6] Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education or training requirements.

[7] Training credit will be granted only for courses or workshops listed as approved by the DEQ or for courses, workshops or alternative activities which have been approved in writing by the DEQ in advance.

[8] Approved equivalents are listed in 252:710-36.

Table 2. WATERWORKS OR WASTEWATER WORKS LABORATORY OPERATORS CERTIFICATE REQUIREMENTS (252:710-3-35)

Classes	Experience[9]	Training[10]
Class A	One year of waterworks or wastewater works laboratory operation; or	32 hours of DEQ approved Class B training and a Bachelor of Science degree in chemistry, microbiology, instrumental analysis or other field of science approved by the DEQ
	Three years of waterworks or wastewater works laboratory operation; or	32 hours of DEQ approved Class B training and an Associates Degree in chemistry, microbiology, instrumental analysis or other field of science approved by the DEQ
	Five years of waterworks or wastewater works laboratory operation	32 hours of DEQ approved Class B training
Class B	Six months of waterworks or wastewater works laboratory operation	32 hours of DEQ approved Class B training and 32 hours of DEQ approved Class C training. An Associates Degree or greater in chemistry, biological sciences, biology, engineering, physical science, hydrology, geology, mathematics, environmental science, microbiology, toxicology, or civil, chemical, sanitary or environmental engineering may be substituted for the 32 hours of DEQ approved Class C training.
Class C	None	32 hours of DEQ approved Class C training

[9] Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education or training requirements.

[10] Training credit will be granted only for courses or workshops listed as approved by the DEQ or for courses, workshops or alternative activities which have been approved in writing by the DEQ in advance.

[OAR Docket #05-819; filed 5-6-05]

TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION
CHAPTER 40. OKLAHOMA IDENTITY THEFT PASSPORT PROGRAM

[OAR Docket #05-786]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
375:40:1-1. to 375:40-1-11. [NEW]
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Oklahoma State Bureau of Investigation; 74 O.S., §62.3
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December 14, 2004
Register publication:
22 Ok Reg 411
Docket number:
05-16
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rules in question provide the procedure for a victim of identity theft to follow to request an identity theft passport. It sets forth the specific documentation that must be provided to the OSBI to obtain an identity theft passport. It provides the procedure for the OSBI to follow in issuing an identity theft passport and the proper restrictions and usages of such an identity theft passport.
CONTACT PERSON:
Jimmy Bunn Jr., Chief Legal Counsel, OSBI, 6600 N. Harvey, Oklahoma City, OK., 73116, 405-879-2605

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

375:40-1-1. Purpose

The rules of this chapter have been adopted for the purpose of complying with the relevant provisions of 75 Oklahoma Statutes Sections 250, et seq. (The Oklahoma Administrative Procedures Act), 22 Oklahoma Statutes, Sections 18(9) and 19a (Expungement of Records - Persons authorized), and 22 Oklahoma Statutes, Section 19b (The Oklahoma Identity Theft Passport Program).

375:40-1-2. Definitions

The following words, when used in this Chapter, shall have the following definitions, unless the context clearly dictates otherwise.

"Application" means the State of Oklahoma Identity Theft Passport Request Victim Information Sheet.

"Bureau" means the Oklahoma State Bureau of Investigation.

"Certificate" means the 8 $\frac{1}{2}$" x 11" State of Oklahoma Identity Theft Passport Certificate issued to identity theft victims.

"Consumer Reporting Agency", as defined in Title 15 United States Code, Section 1681 et seq., The Fair Credit Reporting Act, means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"Eligible"means those victims of identity theft who have been (1) charged with or arrested for a criminal offense or have become the subject of an arrest warrant for a crime that was committed by the unauthorized individual or (2) those whose identities have been stolen, giving an unauthorized person or persons the potential to use the information to obtain false documents or consumer privileges.

"Fee" means a reasonable charge prescribed by the OSBI for processing applications for Identity Theft Passports.

"Identity Theft Affidavit" means a document created by the Federal Trade Commission to assist victims in reporting identity theft to one or more of the three national consumer reporting agencies and the fraud departments of their creditors, banks, or utilities/services.

"Identity Theft Report" means a report of identity theft (police report) made by the victim to a federal, state, or local law enforcement agency within the State of Oklahoma.

"Minor Child" means any person under 18 years of age.

"Nationally Recognized Credit Card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by the issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in the state. The Oklahoma State Bureau of Investigation shall determine which nationally recognized credit cards will be accepted by the Bureau.

"Order of Expungement and Sealing of Records" means a certified court document issued for the purpose of expunging a criminal charge, arrest or outstanding arrest warrant created or issued as the result of identity theft pursuant to 22 Oklahoma Statutes Sections 18(9) and 19a.

"OSBI" means the Oklahoma State Bureau of Investigation.

"Passport" means the Oklahoma Identity Theft Passport Card issued to identity theft victims.

"Reasonable Cause" means the basis on which the OSBI may deny an application for an Identity Theft Passport to include, but not limited to, failure to complete the application form and/or provide any of the required documents outlined in OAC Rule 375: 40-1-5 Submission of Application and Required Documentation.

"Victim" means a person whose name or other identification has been appropriated or used by another without the person's consent or authorization.

375:40-1-3. Request for application

The State of Oklahoma Identity Theft Passport Request Victim Information Sheet and instructions may be requested from the OSBI's Identity Theft Passport Unit by telephone at #405/848-6724 (Oklahoma City metropolitan area) or #1/800/522-8017 (outside the metropolitan area) between 8:00 a.m. and 5:00 p.m., Monday through Friday excluding holidays. The form and instructions are available for download on the Bureau's Internet web site at http://www.osbi.state.ok.us; they may also be requested via e-mail at teresad@osbi.state.ok.us or debbieg@osbi.state.ok.us. The FTC Identity Theft Affidavit is available on the OSBI web site or at http://www.consumer.gov/idtheft/.

375:40-1-4. Eligibility

(a) Pursuant to 22 Oklahoma Statutes Section 19b, Subsection B(1), a person shall be eligible for an Oklahoma Identity Theft Passport if the person has obtained:

(1) An Order for Expungement and Sealing of Records pursuant to Sections 18 and 19 of Title 22 of the Oklahoma Statutes on grounds that the person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization or

(2) An Order for Expungement and Sealing of Records pursuant to 22 Oklahoma Statutes, Section 19a from a court that dismissed a charge against the person on such grounds.

(b) Pursuant to 22 Oklahoma Statutes Section 19b, Subsection B(2) a person shall be eligible for an Oklahoma Identity Theft Passport if the person has filed an Identity Theft Report with a federal, state, or local law enforcement agency and an Identity Theft Affidavit with supporting documentation to one or more consumer reporting agencies.

375:40-1-5. Submission of application and required documents

(a) Each identity theft passport applicant shall provide the following documents:

(1) Complete a State of Oklahoma Identity Theft Passport Request Victim Information Sheet;

(2) Provide his or her current Oklahoma driver's license or current Oklahoma ID card (in-person requests) or a legible photocopy of either document (mail requests). If the victim is a minor child, a parent or legal guardian must provide his or her Oklahoma driver's license or ID card, along with a notarized statement in which the parent or guardian attests he or she has legal responsibility for the victim as a minor child;

(3) Provide two current, passport size, color photographs for the Oklahoma Identity Theft Passport Card;

(4) Provide a certified copy of an Order for Expungement and Sealing of Records issued pursuant to 22 O. S. Section 18(9) or 22 O. S. Section 19a; or copies of all of the following documents

(A) An FTC Identity Theft Affidavit

(B) An Identity Theft Report (police report) made to a federal, state or local law enforcement agency within the State of Oklahoma

(C) A completed United States Postal Service Certified Mail/Domestic Return Receipt (PS Form 3811) as proof that an Identity Theft Affidavit and Identity Theft Report have been sent to and received by one of the three major national consumer reporting agencies identified as:

(i) Equifax Credit Information Services, Inc., http://www.exquifax.com

(ii) Experian Information Solutions, Inc., http://www.experian.com

(iii) TransUnion, http://www.transunion.com

(b) Each identity theft passport applicant shall mail the application packet to the Oklahoma State Bureau of Investigation, Identity Theft Passport Unit, 6600 North Harvey, Oklahoma City, OK 73116, or deliver all such items to Suite 140 at the same address.

375:40-1-6. Review of application

(a) The Identity Theft Passport Unit will review all applications and documentation for completeness and adherence to the law. Failure to provide all of the information requested on the application form or to include any of the required documents will be considered reasonable cause to deny issuance of an Identity Theft Passport.

(b) All Orders issued pursuant to 22 Oklahoma Statutes, Sections 18(9) and 19a will be forwarded to the Bureau's Chief Legal Counsel for review. Valid Orders will be processed as prescribed in 22 Oklahoma Statutes, Section 19. Invalid Orders will be considered reasonable cause to deny issuance of an Identity Theft Passport.

(c) When an Order of Expungement and Sealing of Records is received that pertains to an outstanding arrest warrant only, the Bureau will not have a record or document to expunge and the applicant will be notified of that fact by letter.

375:40-1-7. Identity theft database

An Identity Theft Passport record will be created for each request received and issuances made. Information in the database is sealed and not subject to the Open Records Act, 51 Oklahoma Statutes, Section 24A.1 et seq., pursuant to 22 Oklahoma Statute, Section 18(9) and 22 Oklahoma Statute, Section 19b, Subsection F. However, the Bureau may provide information from the database to a law enforcement agency or officer upon receipt of a written request on a form provided by the OSBI.

375:40-1-8. Issuance or denial of Passport

(a) Unless a review of the application reveals reasonable cause not to issue a passport, the Identity Theft Passport Unit will create an Identity Theft Passport Card stating whether the passport was issued on the basis of an Order for Expungement or an Identity Theft Report and Affidavit. The card will contain the victim's name, address, birthdate, sex, race, height, weight, hair and eye color, the passport number and date issued.

(b) Identity Theft Passport and Certificate shall be returned by certified mail with return receipt requested to ensure delivery to the applicant only. Notification of a denied application shall be made by letter and include the reason(s) for the denial.

375:40-1-9. Notification

(a) Upon issuing an Identity Theft Passport to an identity theft victim, the OSBI will flag any criminal history or other records in its possession that are associated with the passport and are accessible to law enforcement authorities. The OSBI will provide the Department of Public Safety with the passport information so records accessible to law enforcement through the state telecommunications network may be flagged as well.

(b) The Oklahoma Identity Theft Passport Program was enacted to protect the victims of identity theft. To further this effort, the OSBI will provide information about the program to all law enforcement agencies within the state. Means of notification and education include, but are not limited to, letters, articles in agency publications, and web site postings.

375:40-1-10. Passport restrictions

An Identity Theft Passport shall be used only for law enforcement purposes, including determining the accuracy criminal background checks by a law enforcement agency and similar public safety purposes. All other uses are prohibited. Financial institutions and other private entities are advised that presentation of the Oklahoma Identity Theft Passport to private individuals or entities is not authorized.

375:40-1-11. Improper usage

Any use or attempted use of an Identity Theft Passport or Certificate not specifically authorized by OAC 375: 40-1-10 (Passport Restrictions) is not authorized and is prohibited.

[OAR Docket #05-786; filed 5-4-05]

TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION
CHAPTER 45. DONATION OF SUPRLUS PROPERTY

[OAR Docket #05-787]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
375:45:1-1. to 375:45-1-7. [NEW]
AUTHORITY:
Oklahoma State Bureau of Investigation; 74 O.S., §62.3
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Superseded rules:
375:45-1-1. to 375:45-1-7. [NEW]
Gubernatorial approval:
December 20, 2004
Register publication:
22 Ok Reg 414
Docket number:
05-15
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The new permanent rules, 375:45-1-1 through 375:45-1-7 establish the procedures and requirements for the donation of surplus property of the OSBI to political subdivisions of the State of Oklahoma for use in valid and authorized law enforcement efforts as set forth in 74 Oklahoma Statutes, Section 62.3.
CONTACT PERSON:
Jimmy Bunn Jr., Chief Legal Counsel, OSBI, 6600 N. Harvey, Oklahoma City, OK., 73116, 405-879-2605

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

375:45-1-1. Purpose

The purpose of these rules is to establish a procedure and requirements for the transfer of surplus property of the Oklahoma State Bureau of Investigation to law enforcement agencies of political subdivisions of the State of Oklahoma as authorized pursuant to 74 Oklahoma Statutes, Section 62.3.

375:45-1-2. Definitions

The following words, when used in this Chapter, shall have the following definitions, unless the context clearly dictates otherwise.

"OSBI" shall mean the Oklahoma State Bureau of Investigation

"Receiving Agency" shall mean the law enforcement agency of any political subdivision of the State of Oklahoma receiving donated surplus property from the OSBI

"Surplus property" shall mean items, commodities, materials, supplies or equipment owned by the OSBI that the Director of the OSBI determines to be excess, obsolete, antiquated, unused or not needed

375:45-1-3. Determination of need

The Director of the OSBI of the Director's designee is responsible for exercising discretion and determining when and to whom surplus property of the OSBI shall be donated as allowed pursuant to 74 Oklahoma Statutes, Section 62.3. Any surplus property donated to a Receiving Agency shall be used only for valid and authorized law enforcement efforts of the Receiving Agency.

375:45-1-4. Transfer of title

Any donation of surplus property by the OSBI to a Receiving Agency shall result in title and ownership of said property being placed with the Receiving Agency. Upon donation of the surplus property, the OSBI will not continue to maintain any ownership interest in the property, any custody or control of the surplus property, nor any responsibility for the maintenance, upkeep, or proper use of such property.

375:45-1-5. No warranty on donated property/"As is"

Any surplus property donated by the OSBI to a Receiving Agency is donated "as is". The OSBI makes no warranty whatsoever as to the quality, value, safety, or usefulness of the property in question, including but not limited to warranties of merchantability or fitness for a particular use. The Receiving Agency shall hold the OSBI and its employees harmless from any action or claim arising from the donation of surplus property to the Receiving Agency by the OSBI or the use of such property by the Receiving Agency.

375:45-1-6. Receipt

(a) Upon receipt of any surplus property donated to a Receiving Agency by the OSBI, the head of the Receiving Agency or a designee shall sign a receipt identifying the surplus property donated in sufficient detail as to be able to identify the property in the inventory of OSBI property.

(b) At a minimum, the receipt should include the:

(1) name and address of the Receiving Agency;

(2) name of the Receiving Agency head and any designee signing the receipt in question;

(3) make/model, VIN or serial number or other identifying characteristics of the property;

(4) OSBI inventory number of the property if applicable;

(5) date of the transfer of property

(6) general condition of the property.

375:45-1-7. Inventory

(a) Upon transfer of donated surplus property to a Receiving Agency, the OSBI shall remove such donated property from its OSBI property inventory and reflect, as necessary within that inventory, the ultimate disposition of that property.

(b) Upon transfer of donated surplus property to a Receiving Agency, the Receiving Agency shall reflect and document the addition of such donated surplus property within the Receiving Agency's property inventories.

[OAR Docket #05-787; filed 5-4-05]

TITLE 422. OKLAHOMA LIQUEFIED PETROLEUM GAS RESEARCH, MARKETING AND SAFETY COMMISSION CHAPTER 15. ASSESSMENT ENFORCEMENT AND COLLECTION

[OAR Docket #05-724]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Purpose and Definitions [NEW]
422:15-1-1. [NEW]
422:15-1-2. [NEW]
Subchapter 3. Audits and Investigations [NEW]
422:15-3-1. [NEW]
422:15-3-2. [NEW]
Subchapter 5. Assessment Hearings [NEW]
422:15-5-1. through 422:15-5-6. [NEW]

AUTHORITY:
Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Act; Pursuant to 52 O.S., §§ 420.24.

DATES:
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n/a

INCORPORATIONS BY REFERENCE:
Incorporated standards:
Article I and/or Article II of the Administrative Procedures Act, 75 O.S. 2001, §§ 250, et seq., and subsequent editions.
Incorporating rules:
422:15-1-2
422:15-5-1
422:15-5-4 through 422:15-5-6
Availability:
Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission, 6412 N. Santa Fe Avenue, Suite C, Oklahoma City, Oklahoma 73116-9111. Office hours from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Phone number: (405) 879-9828.
ANALYSIS:
The purpose of the proposed new Chapter 15 is to set forth the procedures of the Commission used in the auditing and investigation of loading rack operators and importers, and the enforcement and collection of assessments due under the Act. Act means the Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Act, 52 O.S. 2001, §§ 420.20, et seq., as amended, or any act over which the Commission has regulatory jurisdiction. The proposed rule also provides the definition of several words and terms used in the Chapter, outlines the procedure for issuing an Order of Audit and Investigation and outlines the procedure for ordering and conducting an Assessment Hearing. The proposed rule was necessary to help clarify and specify statutory language that allows the Commission to enforce the assessment requirements of the Act.
CONTACT PERSON:
Daniel Fitzpatrick, (405) 879-9828.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

422:15-1-1. Purpose

The purpose of this Chapter is to set forth the procedures of the Commission used in the auditing and investigation of loading rack operators and importers, and the enforcement and collection of assessments due under the Act.

422:15-1-2. Definitions

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

"Act" means the Oklahoma Liquefied Petroleum Gas Research, Marketing, and Safety Act, 52 O.S.2001, §§ 420.20, et seq., as amended, or any act over which the Commission has regulatory jurisdiction.

"APA" means Article I and/or Article II of the Administrative Procedures Act, 75 O.S. 2001, §§ 250, et seq and subsequent amendments.

"Assessment" means the assessment in the amount of one-half cent ($0.005) per gallon imposed on the first sale of odorized LP gas or at the time of import of odorized LP gas into the State of Oklahoma or as otherwise determined by law.

"Assessment Hearing" means an individual proceeding before the Commission to determine and order compliance by a loading rack operator or importer with the assessment requirements of the Act.

"Commission" means the Oklahoma Liquefied Petroleum Gas Research, Marketing, and Safety Commission or its representative.

"Executive Director" means the Executive Director of the Commission.

"Just Cause" means a reasonable suspicion that a load rack operator or importer has failed to remit to the Commission the required assessment.

"Staff" means the personnel of the Commission.

SUBCHAPTER 3. AUDITS AND INVESTIGATIONS

422:15-3-1. Inspection of records

(a) Upon written request from the Commission, a load rack operator or importer shall make available for inspection records of LP Gas operations necessary to determine whether the load rack operator or importer has remitted the assessment due to the Commission. Such written request shall identify the records sought, shall designate a time and place for production of the records, and shall be served by certified mail or as otherwise allowed by law.

(b) If a load rack operator or importer fails to comply with a request for inspection of records or if circumstances otherwise warrant, the Executive Director, with the assistance of staff, shall apply to the Commission for an Order of Audit and Investigation and shall present to the Commission evidence in support thereof.

(c) After review of the application and supporting evidence, the Commission shall issue an Order of Audit and Investigation upon a determination by a majority of the Commission that just cause exists.

(d) The Order of Audit and Investigation shall set forth a summary of the evidence in support of the determination of just cause. The Order shall command the person or entity to whom it is directed to make available for inspection, examination, and copying the records of LP gas operations maintained pursuant to the Act and shall authorize a representative of the Commission to enter an office, premises or place of business of a loading rack operator or importer to inspect, examine, and obtain copies of the LP gas operation records.

422:15-3-2. Execution of order of audit and investigation

An Order of Audit and Investigation may be executed by the Commission at reasonable times and after reasonable notice to the loading rack operator or importer.

SUBCHAPTER 5. ASSESSMENT HEARINGS

422:15-5-1. Petition and notice

The Executive Director, with the assistance of staff, shall petition the Commission for an Order of Assessment. The petition shall include a statement of the time, place and nature of

the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. The petition shall satisfy the requirements of the APA. The petition shall be served on the parties by certified mail, personal service, or other such means as may be permitted in the Oklahoma Pleading Code. The parties shall be provided thirty (30) days notice of an Assessment Hearing.

422:15-5-2. Responses and continuances

(a) A Respondent may file with the Commission a responsive pleading to a petition for an Order of Assessment. Responses must be postmarked no later than seven days prior to the scheduled hearing.

(b) Motions for continuance of the hearing to another date or time shall be in writing and filed with the Commission. A motion for a continuance shall state the reasons for the request and specify the length of time requested.

422:15-5-3. Subpoenas

(a) Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Executive Director upon request by a party. As an officer of the court, an attorney authorized to practice law in Oklahoma may also issue and sign subpoenas. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code.

(b) A party may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Commission may, in its discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c) Motions to quash subpoenas may be filed with the Commission and will be ruled on by the Commission.

422:15-5-4. Administrative law judge

The Commission may designate a person to serve as Administrative Law Judge for any proceeding properly filed with the Commission. Administrative Law Judges shall be familiar with the rules of procedure and generally familiar with the substantive rules governing the matter, and shall not have had prior involvement in the matter other than as a Administrative Law Judge. The Administrative Law Judge so designated shall have full authority to conduct all aspects of the hearing and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. The Administrative Law Judge may also:

(1) arrange and issue notice of the date, time and place of hearings and conferences;

(2) establish the methods and procedures to be used in the presentation of the evidence;

(3) administer oaths and affirmations;

(4) regulate the course of the hearing and govern the conduct of participants;

(5) examine witnesses;

(6) rule on, admit, exclude and limit evidence;

(7) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes; and

(8) rule on motions and other pending procedural matters.

422:15-5-5. Order of procedure

Upon proper service of petition and notice to the Respondent, the Commission shall hold an Assessment Hearing. All motions shall be considered and ruled on by the Commission prior to the consideration of the petition. At the hearing on the petition, each party may make an opening statement; present witnesses, documents and exhibits on its behalf; cross-examine adverse witnesses; present rebuttal witness; and make closing arguments. The rules of evidence shall be those specified by the APA.

422:15-5-6. Order of assessment

(a) After review and consideration of all evidence presented and upon a majority vote of the Commission, the Commission may issue an Order of Assessment commanding the remittance of assessments owed and imposing such penalties as may be provided by law. The Order shall include findings of fact and conclusions of law, and shall otherwise satisfy the requirements of the APA. The Order of Assessment shall be a final order appealable under the APA.

(b) Any Respondent or other person who fails to appear as directed, after service of the petition and notice of hearing as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the petition. A final order in such proceeding may be issued by the Administrative Law Judge or the granting by default the relief prayed for in the petition.

(c) Any dispute over the remittance of an assessment may be resolved by an agreed settlement or consent order, with the approval of a majority of the Commission.

[OAR Docket #05-724; filed 4-27-05]

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

[OAR Docket #05-727]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
600:10-1-2. Definitions [AMENDED]
600:10-1-4. Examination [AMENDED]
600:10-1-16. Supervision of trainee appraisers [AMENDED]

AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 706 (B)

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INCORPORATIONS BY REFERENCE:
Incorporated standards:
Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Standards Board of The Appraisal Foundation
Appraiser Qualification Criteria, promulgated by the Appraiser Qualifications Board of The Appraisal Foundation
Incorporating rules:
600:10-1-2
600:10-1-4(b)
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107
ANALYSIS:
The change to 600:10-1-2 incorporates the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of The Appraisal Foundation by reference, bringing the rule into agreement with 59 O.S. § 858-726. The change to 600:10-1-4 incorporates the Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of The Appraisal Foundation by reference bringing the rule into agreement with 59 O.S. § 858-712 and 713 and adds a requirement that those applying for Trainee Appraiser identify a supervisory appraiser before taking the licensing examination. The change to 600:10-1-16 brings the rule into compliance with the Appraiser Qualification Criteria and the policies of the Board and better define the rules for users.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

600:10-1-2. Definitions

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

"Board" means the Oklahoma Real Estate Appraiser Board.

"Certificates of course completion" means a document acceptable to the Board which signifies satisfactory completion of the course and reflects the hours of credit earned.

"Classroom hour" is equal to fifty (50) minutes out of each sixty (60) minute segment.

"Continuing education" means education that is creditable toward the education requirements that must be satisfied to renew licensure or certification as a Trainee, State Licensed Appraiser, State Certified Residential Appraiser, and State Certified General Appraiser.

"Instructor" means a person who meets the qualifications as set out at Section 10-1-8(a)(6).

"Provider" means a person, corporation, professional association or its local affiliates, or any other entity which is approved by the Board and provides approved qualifying and continuing education to real estate appraisers.

"Qualifying education" means education that is creditable toward the education requirements for initial licensure or certification or upgrade of existing licensure or certification under one or more of the four real estate appraiser classifications (Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser, and State Certified General Appraiser).

"Standards of professional appraisal practice" as referred to in the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. §§858-700 et seq. means the Uniform Standards of Professional Appraisal Practice.

"State Certified General Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"State Certified Residential Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"State Licensed Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"Trainee Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"Uniform standards" means the Uniform Standards of Professional Appraisal Practice, as authorized by the Appraisal Subcommittee pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, ~~and~~ which are the standards rules that meet the minimum requirements adopted by the Appraisal Foundation, and which are incorporated by reference.

600:10-1-4. Examination

(a) To be certified as a Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser the applicant must pass the examination that is appropriate for the applicable classification or certificate.

(b) Prior to taking the appraiser examination, an individual must make application for Trainee, State Licensed, State Certified Residential or State Certified General Appraiser and shall satisfy all licensing and certification requirements as set forth by the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of the Appraisal Foundation, which are incorporated by reference.

(c) Applicants for Trainee, State Licensed, State Certified Residential and State Certified General Appraiser must complete the required hours in both education and experience

before making application to take the appraiser examination. Provided, there shall be no experience requirement for the Trainee Appraiser.

(d) Applicants for Trainee Appraiser must provide the identification of a qualified supervisory appraiser in the manner described by 600:10-1-16(a).

(e) If requirements are satisfactorily met, notification shall be sent to the applicant allowing that applicant to take the examination on the next available test date.

600:10-1-16. Supervision of trainee appraisers

(a) Trainee Appraisers shall report to the Board, on a form prescribed by the Board, the identity of any supervisory appraiser. Trainee Appraisers may have more than one supervisory appraiser, but a supervisory appraiser may not supervise more than three (3) trainee appraisers at one time. When a Trainee Appraiser has more than one supervisory appraiser, each shall be reported to the Board as indicated above.

(1) The supervisor-trainee relationship shall become effective on the date of receipt of the original required form with original signatures in the administrative office of the Board.

(2) A supervisory appraiser shall notify the Board in writing immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(3) Supervisory appraisers having responsibility for more than three (3) trainee appraisers on the effective date of this rule may keep those relationships intact, but may not undertake additional supervisory responsibilities until such time as this action will not violate the three (3) trainee limitation imposed above.

(b) Trainee Appraisers shall maintain an appraisal log on a form prescribed by the Board. Separate appraisal logs shall be maintained for work performed with each supervisory appraiser. This appraisal log shall record the following information:

(1) Client name and ~~address~~date of report,

(2) Address or legal description of the real property appraised,

(3) Description of the work performed by the trainee appraiser and the scope of review and supervision of the supervisory appraiser,

(4) Number of actual hours worked, ~~and~~

(5) Type of property appraised~~.~~,

(6) Form number or description of report rendered~~.~~, and

(7) The signature and state certificate number of the supervisory appraiser.

(c) Experience credit for the purpose of upgrading will not be given unless:

(1) a properly completed trainee-supervisory report form is on file in the administrative office of the Board, and

(2) the Trainee Appraiser either signs the certification required by Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice, or the supervisory appraiser gives credit to the Trainee Appraiser in the certification and complies with the requirements of Standards Rule 2-2(a)(vii), 2-2(b)(vii), or 2-2(c)(vii) as applicable.

(~~c~~d) ~~Trainee Appraisers shall be entitled to obtain copies of reports of all appraisals in which the Trainee Appraiser participated. The~~ Both supervisory and trainee appraisers shall maintain complete workfiles as required by the Uniform Standards of Professional Appraisal Practice and the Oklahoma Certified Real Estate Appraisers Act.

(~~d~~e) A supervisory appraiser shall meet the following requirements:

(1) have been a State Licensed or Certified Appraiser for a period of at least three (3) years;

(2) ~~have not less than 2000 hours experience;~~ be a State Certified General or State Certified Residential Appraiser on a credential issued by the Oklahoma Real Estate Appraiser Board;

(3) be in good standing with the Board and not subject to any disciplinary action within the last two years that affects the supervisor's legal eligibility to engage in appraisal practice; and

(4) accept responsibility for training, guidance, and direct supervision of the Trainee Appraiser by signing the form referenced in (a), above.

(5) State Licensed appraisers with supervisor-trainee relationships in place on the effective date of this rule may keep those relationships intact, but may not undertake additional supervisory responsibilities until such time as they have upgraded to State Certified General or State Certified Residential Appraiser.

(~~e~~f) A supervisory appraiser shall:

(1) accept responsibility for a Trainee Appraiser's appraisal reports by signing each report and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, and

(2) personally inspect each appraised property with the Trainee Appraiser until the supervisory appraiser determines that the Trainee Appraiser is competent, in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice, for the property type.

~~(f) A supervisory appraiser shall notify the Board immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.~~

(g) Prior to assuming duties as a supervisory appraiser, an appraiser who has been disciplined by the Board must receive approval from the Board.

[OAR Docket #05-727; filed 4-28-05]

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

[OAR Docket #05-728]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:15-1-2. Definitions [AMENDED]
600:15-1-4. ~~Complaint~~Grievance~~process~~ procedure [AMENDED]
600:15-1-5. Issuance of formal complaint: setting date for formal hearing [AMENDED]
600:15-1-6. Notice of disciplinary proceedings [AMENDED]
AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 706 (B)
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SUPERCEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Standards Board of The Appraisal Foundation
Incorporating rules:
600:15-1-2
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107
ANALYSIS:
The change to 600:15-1-2 incorporates the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of The Appraisal Foundation by reference, bringing the rule into agreement with 59 O.S. § 858-726. The change to 600:15-1-4 and 600:15-1-5 changes the verbiage informal complaint to grievance, with the intent of making the distinction between items having probable cause and those which do not. The change to 600:15-1-6 allows the Board's Director to respond to matters involving scheduling with respect to disciplinary proceedings.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

600:15-1-2. Definitions

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

"Act" means the Oklahoma Certified Real Estate Appraisers Act, cited as 59 Oklahoma Statutes, Sections 858-700 et seq.

"Administrator" means the Commissioner of the State Insurance Department.

"Board" means the Oklahoma Real Estate Appraiser Board.

"Certified Real Estate Appraiser" means those persons meeting the requirements for certification as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Clear and convincing evidence" means that considering all the evidence in the case, the proposition in question is highly probable and free from serious doubt.

"Department" means the State Insurance Department.

"Director" means the person designated by the Administrator as Director of the Real Estate Appraiser Division of the Oklahoma Insurance Department.

"Hearing Panel" means the three member panel selected by the Board to conduct a disciplinary hearing. Hearing Panel is selected from the Standards and Disciplinary Procedures Committee.

"Licensed Real Estate Appraiser" means those persons meeting the requirements for licensure as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Person" means an individual, company, association, organization, society, partnership, trust, corporation or estate.

"Probable Cause Committee" will be Board selected and will be comprised of three (3) members: a past member of the Board, a current member of the Board, and a Certified Appraiser from the Disciplinary Committee. Provided, at all times, at least two (2) members of the Committee shall be certified appraisers, of the two (2) certified appraisers, at least one (1) shall be a certified general appraiser.

"Respondent" means a Trainee, State Licensed, Certified Residential, or Certified General Real Estate Appraiser against whom a complaint has been received and not been finally resolved.

"Trainee Appraiser" means those persons meeting the requirements for licensure as a Trainee Appraiser as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Uniform standards" means the Uniform Standards of Professional Appraisal Practice, as authorized by the Appraisal Subcommittee pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, ~~and~~ which are the standards rules that meet the minimum requirements adopted by the Appraisal Foundation, and which are incorporated by reference.

600:15-1-4. ~~Complaint~~Grievance ~~process~~ procedure

(a) A ~~complaint~~grievance may be filed with the Board against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser on a form prepared by the Board. In addition, where reasonable cause exists, a ~~complaint~~grievance may be brought against a Trainee, State

Licensed, State Certified Residential or State Certified General Appraiser directly by the Board.
(b) All complaints will be deemed ~~informal~~grievances until the Board votes it a formal complaint.
(c) The Probable Cause Committee will review all ~~informal complaints~~grievances.
(d) The Probable Cause Committee will be selected by the Board, to serve, at the pleasure of the Board for a minimum of one quarter. The Board selected Prosecuting Attorney may be advisor to the Probable Cause Committee.
(e) The Probable Cause Committee is an advisory body to the Board whose function is to summarize the ~~informal complaint~~grievance and to make an informed recommendation regarding disposition of the ~~informal complaint~~grievance.
(f) The Probable Cause Committee will meet as needed depending on the volume of ~~informal complaints~~grievances to be reviewed. Any Board member acting as a member of the Probable Cause Committee shall be recused from all Board decisions relating to the ~~complaint~~grievance.
(g) The Board may direct the Department to turn over any or all ~~complaints~~grievances to the Probable Cause Committee for disposition in accordance with procedures found in 600:15-1-4 and 600:15-1-5.

600:15-1-5. Issuance of formal complaint: setting date for formal hearing

(a) If the ~~complaint~~grievance and/or summary and recommendations of the Probable Cause Committee appear to the Board to warrant and support such action, the Board shall file a formal complaint and the Director shall set the date, time and place for a formal hearing.
(b) The Prosecuting Attorney may select from the Standards and Disciplinary Procedures Committee a certified appraiser to assist in the presentation before the Hearing Panel.

600:15-1-6. Notice of disciplinary proceedings

(a) Where the Board deems the Probable Cause Committee's response to the ~~complaint~~grievance warrants disciplinary proceedings, the Respondent shall be served with Notice of Disciplinary Proceedings which shall specify the rule, statute, or standard(s) of professional conduct allegedly violated by the Respondent. Service of such notice shall be by Certified Mail, Return Receipt Requested to the last address reported to the Board by the Respondent.
(b) No less than ten (10) days prior to the scheduled hearing, written notice shall be provided to the parties stating which individual Hearing Officers will comprise the Panel conducting the disciplinary proceedings. Upon a showing of good cause, any Hearing Panel member selected may be removed by either party. If the parties cannot agree upon a Hearing Panel, either party may make written application to the Board which shall then make an appointment.
(c) Following selection and acceptance of the three (3) member Hearing Panel, the three members shall elect one member to serve as Chairman of the Hearing Panel, to preside over the hearing for which they have been selected.
(d) By mutual agreement of the parties ~~and approval of the Hearing Panel~~ the hearing may be rescheduled by the Director at ~~both~~ a different time, date or location with proper written notice of such change given to all parties.
(e) Disciplinary proceedings shall be conducted by a Hearing Panel.
(f) Hearing Officers shall be appointed by Board order. All such persons must be State Certified Residential or State Certified General Appraisers. All hearing officers shall be selected by the Board.
(g) The Hearing Panel shall complete the case and issue any rulings, findings, conclusions or recommendations.
(h) Any person subject to the jurisdiction of the Board, who shall attempt to pressure, coerce, intimidate, or otherwise influence or affect the opinion of a board member, hearing officer, witness or complainant regarding a disciplinary matter, shall be subject to disciplinary action by the Board.
(i) In the event any hearing officer has any personal, social, or economic relationship with the complainant, appraiser named in any complaint, or any attorney involved in the proceedings, the hearing officer shall make full disclosure of that relationship to the Board who shall take appropriate administrative action to assure objectivity in the proceedings including, if necessary, replacement of any Hearing Panel member.

[OAR Docket #05-728; filed 4-28-05]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 12. GUIDELINES FOR SUPERVISION

[OAR Docket #05-788]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
675:12-1-6. Board Approved Supervisors [AMENDED]
AUTHORITY:
TITLE 59 O.S., Section 1250.1-1256, State Board of Licensed Social Workers
DATES:
Comment period:
February 1, 2005 to March 3, 2005
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March 9, 2005
Submitted to Senate:
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Gubernatorial approval:
March 23, 2005
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 5, 2005.
Final adoption:
May 5, 2005
Effective:
June 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
675:12:1:6. Board Approved Supervisors [AMENDED]

Gubernatorial approval:
December 20, 2004
Register publication:
22 Ok Reg 351
Docket number:
04-1597
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This rule sets forth the requirements and expectations of a licensee applying for and obtaining the status of Board Approved Supervisor. The rule currently requires additional supervisor training at least every three years, however, does not address initial training. The proposed amendment requires persons approved as a Board Approved Supervisor to obtain initial supervisor training within one year of approval.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

675:12-1-6. Board Approved Supervisors

(a) **Requirements.** The two year experience requirement for specialty certification contracted external to the agency must be under the supervision of a Board Approved Supervisor. A Board approved social worker with one of the specialty certifications presently recognized by the Board does not automatically qualify as a Board Approved Supervisor. The knowledge, experience, and skill base of a Board Approved Supervisor exceeds the minimum requirements for specialty certification. Applicants for a Board Approved Supervisor shall:

(1) Submit an application on the most current forms provided by the Board.

(2) Be a Licensed Social Worker with the title licensure in the same method as supervisor status is sought.

(3) Have at least five (5) years of full time work experience (or equivalent) beyond the master's degree in social work. Three of these five years must be full time work experience (or equivalent) in the specialty that supervisory status is sought.

(4) Have at least two years of supervisory work experience following completion of the master's degree in social work.

(5) Have two (2) letters of reference submitted to the Oklahoma State Board of Licensed Social Workers. At least one letter shall be from a licensed social worker holding the same licensure title. Documentation of such participation will be furnished the Board and will be updated periodically as required by the Board.

(b) **Approved supervisor status.** Board approved supervisor status remains in effect contingent upon maintaining a current license in good standing and completing ~~additional~~ supervisor training, sponsored or approved by the Board, <u>within one year of approval and</u> at least every three years <u>thereafter</u>.

(c) **Minimum supervision expectations.**

(1) A supervisee must receive an average of one hour per week of face-to-face supervision for two years (minimum of 100 hours). Group supervision is acceptable if such supervision does not exceed at least one-fourth of the total supervisory time per evaluation period. Group supervision is defined as educational supervision conducted with more than one supervisee by an LSW with appropriate certification in the specialty sought by supervisees, or a Board Approved Supervisor with appropriate certification in specialty sought by supervisees. The group should be limited in size to no more than 4 supervisees.

(2) A contract will be negotiated by supervisor and supervisee and a copy furnished to the Oklahoma State Board of Licensed Social Workers prior to beginning. Any supervision completed prior to approval of the supervision contract will not be accepted. An official transcript with degree posted and current job description must accompany the contract. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the supervisor's evaluation of the supervisee. Should the contract be terminated before completion of the minimum number of hours required, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision. The supervisee shall notify the Board within 30 days of any job change and submit a new job description.

(3) There will be a periodic written evaluation:

(A) no less than 6 months and a total of 25 hours of supervision

(B) no less than 12 months and a total of 50 hours of supervision

(C) no less than 24 month and a total of 100 hours of supervision

(4) A copy of the written evaluation will be provided by the supervisee to the Board office.

(5) If supervision is terminated by either party, the supervisee is responsible for notifying the Board and completing a termination form which the Board will provide. Such termination form must be received by the Oklahoma State Board of Licensed Social Workers within 14 days of the termination.

(6) If there is any question regarding the supervisee's competency, the supervisor is free to ask for a sample of supervisee's work.

(7) It is required that all supervisors for licensure participate in supervision training sponsored or approved by the Board. Board Approved Supervisors are required to participate in the <u>t</u>raining. Documentation of such participation will be furnished the Oklahoma State Board of Licensed Social Workers and will be updated periodically as required by the Board.

(8) When the proposed supervisor is not a staff member of the supervisee's agency, social work ethics demand that the proposed supervisor insure that the agency administration (or its representative) is in accord with the

arrangements for supervision by a qualified LSW supervisor. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(9) Supervision from a Board Approved Supervisor may be contracted from outside the agency should internal supervision be unavailable.

(10) All supervisors will adhere to the guidelines on supervision required by the Oklahoma State Board of Licensed Social Workers.

[OAR Docket #05-788; filed 5-6-05]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 10. LICENSURE AND FEES

[OAR Docket #05-745]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists
690:10-3-4. [AMENDED]
690:10-3-5. [AMENDED]
690:10-3-6. [AMENDED]
690:10-3-7. [AMENDED]
Subchapter 9. Fees
690:10-9-2. [AMENDED]
AUTHORITY:
59 O.S., 2001 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.
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Failure of legislature to disapprove the rules resulted in approval May 3, 2005.
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SUPERSEDED EMERGENCY ACTIONS:
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Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists
690:10-3-4. [AMENDED]
690:10-3-5. [AMENDED]
690:10-3-6. [AMENDED]
690:10-3-7. [AMENDED]
Subchapter 9. Fees
690:10-9-2. [AMENDED]
Gubernatorial approval:
July 6, 2004
Register publication:
21 Ok Reg 3116
Docket number:
04-1211
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
690: 10-3-4. Allows the Board to set degree requirements for full licensure for speech-language pathology and audiology, as consistent with recent revisions of enabling statute.
690:10-3-5. Clarifies supervised clinical practicum requirements for speech-language pathology and audiology, as consistent with recent revisions of enabling statute.
690: 10-3-6. Allows the Board to define clinical experience requirements for speech-language pathology and audiology, as consistent with recent revisions of enabling statute.
690: 10-3-7. Clarifies the conditions whereby a license may be granted based upon reciprocity.
690: 10-9-2. Allows the Board to increase cost of licensure fee and late fee for adequate funds to process and investigate complaints and continuing education for staff and Board members.
CONTACT PERSON:
Nuala South, Board Chair of the Oklahoma Board of Examiners for Speech-Language Pathology and Audiology, 405-360-9633.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF APRIL 29, 2005:

SUBCHAPTER 3. LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

690:10-3-4. Academic requirement

(a) **Degree requirement.**

(1) Each speech-language pathology applicant shall hold not less than a master's degree, or its equivalent, with a major emphasis in speech-language pathology or audiology from an accredited academic institution offering a graduate program in speech-language pathology; ~~and/or audiology~~.

(2) Each audiology applicant, until December 31, 2006, shall hold not less than a master's degree, or its equivalent, with a major emphasis in audiology from an accredited academic institution offering a graduate program in audiology. After December 31, 2006, each audiology applicant shall hold not less than a post-baccalaureate residential professional doctor of audiology degree (Au.D) from a regionally accredited academic institution, a post-masters distance education professional

doctor of audiology degree (Au.D.) from a regionally accredited academic institution, a Doctor of Philosophy degree (Ph.D.) with emphasis in audiology from a regionally accredited academic institution, or its equivalent as determined by the Board.

(b) **Academic transcripts.**

(1) Each speech-language pathology applicant seeking licensure shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form - Verification for Licensure Application) completion of at least 75 semester credit hours from one or more accredited colleges or universities that reflect a well-integrated program of study dealing with (a) the biological/physical sciences and mathematics, (b) the behavioral and/or social sciences, including normal aspects of human behavior and communication, and the nature, prevention, evaluation, and treatment of speech, language, hearing, and related disorders. Some course work must address issues pertaining to normal and abnormal human development and behavior across the life span and to culturally diverse populations. At least twenty-seven (27) of the 75 semester credit hours must be in Basic Science Course Work. At least thirty-six (36) of the 75 semester credit hours must be in Professional Course Work.

(~~1~~A) Basic Science Course Work. Applicants must earn at least twenty-seven (27) credit hours in the basic sciences. At least six (6) semester credit hours must be in the biological/physical sciences and mathematics. At least six (6) semester hours must be in the behavioral and/social sciences. At least fifteen (15) semester credit hours must be in the basic human communication processes, to include course work in each of the following three areas of speech, language, and hearing: the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic, ~~and~~ psycholinguistic and cultural aspects.

(~~2~~B) Professional Course Work. Applicants must earn at least thirty-six (36) semester credit hours in graduate or professional courses that concern the nature, prevention, evaluation, and treatment of speech, language and hearing disorders. Those thirty-six (36) semester credit hours must encompass courses in speech, language, and hearing that concern disorders primarily affecting children as well as disorders primarily affecting adults. ~~At least thirty (30) of the thirty-six (36) semester credit hours must be in courses for which graduate credit was received, and at least twenty one (21) of those thirty (30) must be in the professional area for which the license is sought. At least thirty (30) of the thirty-six (36) semester credit hours of professional course work must be in speech language pathology. At least six (6) of the thirty (30) must be in speech disorders, and at least six (6) must be in language disorders. At least six (6) of the thirty-six (36) semester credit hours of professional course work must be in audiology. At least three (3) of the six (6) must be in hearing disorders and hearing evaluation, and at least three (3) must be in habilitative/rehabilitative procedures with individuals who have hearing impairment. A maximum of six (6) academic semester credit hours associated with clinical practicum may be counted toward the minimum of thirty-six (36) semester credit hours of professional course work, but those hours may not be used to satisfy the minimum of six (6) semester credit hours in speech disorders, (6) hours in language disorder, or six (6) hours in audiology, or in the twenty one (21) graduate credits in the professional area for which licensure is sought.~~

(2) Specific knowledge must be demonstrated in the following areas:

(A) articulation

(B) fluency

(C) voice and resonance, including respiration and phonation

(D) receptive and expressive language (phonology, morphology, syntax, semantics, and pragmatics) in speaking, listening, reading, writing, and manual modalities

(E) hearing, including the impact on speech and language

(F) swallowing (oral, pharyngeal, esophageal, and related functions, including oral functions for feeding; orofacial myofunction)

(G) cognitive aspects of communication (attention, memory, sequencing, problem-solving, executive functioning)

(H) social aspects of communication (including challenging behavior, ineffective social skills, lack of communication opportunities);

(I) communication modalities (including oral, manual, augmentative, and alternative communication techniques and assistive technologies)

(3) Waiver of transcript. The Board shall waive the transcript requirement and grant a license to any applicant for licensure as a speech-language pathologist who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(4) Each audiology applicant, until December 31, 2006, seeking licensure shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form -Verification for Licensure Application) completion of at least thirty six (36) semester credit hours from one or more accredited colleges or universities that reflect a well-integrated program of study dealing with (a) the biological/physical sciences and mathematics, (b) the behavioral and/or social sciences, including normal aspects of human

behavior and communication, and the nature, prevention, evaluation, and treatment of speech, language, hearing, and related disorders. Some course work must address issues pertaining to normal and abnormal human development and behavior across the life span and to culturally diverse populations. After December 31, 2006 each audiology applicant seeking licensure shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form -Verification for Licensure Application) completion of at least 75 semester credit hours in graduate or professional courses from one or more accredited colleges or universities that reflect a well-integrated program of study dealing with the practice of audiology. Specific knowledge must be demonstrated in the following areas:

(A) identification, diagnosis, assessment, measurement, testing, appraisal and evaluation related to hearing, vestibular function, equilibrium, balance and fall prevention, and associated neural systems;

(B) prevention, treatment, intervention, management and counseling related to hearing, vestibular function, equilibrium, balance and fall prevention, and associated neural systems;

(C) identification, evaluation and treatment of any abnormal condition related to auditory sensitivity, acuity, tinnitus, function or processing, speech, language or other aberrant behavior resulting from hearing loss;

(D) designing, and implementing aural habilitation and rehabilitation or other related programs for the amelioration of disorders of hearing, vestibular function, equilibrium, balance, and fall prevention and associated neural systems.

(5) Waiver of transcript. The Board shall waive the transcript requirement and grant a license to any applicant for licensure as an audiologist who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association or its current equivalent. All fees associated with obtaining such evidence shall be borne by the applicant.

690:10-3-5. Supervised clinical practicum requirement

(a) Until December 31, 2004~~Each~~ each speech-language pathology applicant seeking licensure shall submit evidence (Academic Preparation and Practicum Form - Verification for Licensure Application) of satisfactory completion of three hundred seventy-five (375) clock hours of supervised clinical observation and clinical practicum that are provided by the educational institution or by one of its cooperating programs. T~~he supervision must be provided by a speech language pathologist.or audiologist in the professional area for which licensure is sought.~~

(1) Clinical Observation. Applicants must complete at least twenty-five clock hours of supervised observation prior to beginning the initial clinical practicum. Those twenty-five (25) clock hours must concern the evaluation and treatment of children and adults with disorders of speech, language, or hearing.

(2) Clinical Practicum. Until December 31, 2004, applicants must complete at least three hundred fifty (350) clock hours of supervised clinical practicum that concerns the evaluation and treatment of children and adults with disorders of speech, language, and hearing. No more than twenty-five (25) of the clock hours may be obtained from participation in staffings in which evaluation, treatment, and/or recommendations are discussed or formulated with or without the client present. At least two hundred fifty (250) of the three hundred fifty (350) clock hours must be completed in the professional area for which licensure is sought while the applicant is engaged in graduate study. At least fifty (50) supervised clock hours must be completed in each of three (3) types of clinical settings. The applicant must have experience in the evaluation and treatment of children and adults and with a variety of types and severities of disorders of speech, language, and hearing.

(A) Speech-language pathology applicants must complete at least two hundred fifty (250) of the three hundred fifty (350) supervised clock hours in speech-language pathology.

(i) At least twenty (20) of those two hundred fifty (250) clock hours must be completed in each of the eight categories listed below:

(I) Evaluation: Speech disorders in children

(II) Evaluation: Speech disorders in adults

(III) Evaluation: Language disorders in children

(IV) Evaluation: Language disorders in adults

(V) Treatment: Speech disorders in children

(VI) Treatment: Speech disorders in adults

(VII) Treatment: Language disorders in children

(VIII) Treatment: Language disorders in adults

(ii) Up to twenty (20) clock hours in the major professional area may be in related disorders.

(iii) At least twenty (20) of the three hundred fifty (350) clock hours must be in audiology.

(iv) A portion of the twenty (20) clock hours must involve the evaluation or screening of individuals with hearing disorders, a portion must involve habilitation/rehabilitation of individuals who have hearing impairment.

(b) After December 31, 2004, speech language pathology applicants must submit evidence of satisfactory completion of four hundred (400) clock hours of supervised clinical

practicum, of which at least must 375 must be in direct client/patient contact and 25 in clinical observation that are provided by the educational institution or by one of its cooperating programs. At least 325 of the 400 clock hours must be completed while the applicant is engaged in graduate study in a program accredited in speech language pathology by the Council of Academic Accreditation in Audiology and Speech-Language Pathology.

(~~B~~c) Until December 31, 2006, audiology applicants must complete at least two hundred fifty (250) of the three hundred fifty (350) supervised clock hours in audiology.

(~~i~~A) At least forty (40) of those two hundred fifty (250) clock hours must be completed in each of the first two (2) categories listed below.

(~~ii~~B) At least eighty (80) supervised clock hours must be completed in categories III and IV with a minimum of ten (10) hours in each of these categories.

(~~iii~~C) At least twenty (20) of those two hundred fifty (25) clock hours must be completed in category five V.

(~~I~~i) Evaluation: Hearing in children

(~~II~~ii) Evaluation: Hearing in adults

(~~III~~iii) Selection and use: Amplification and assistive devices for children

(~~IV~~iv) Selection and use: Amplification and assistive devices for adults

(~~V~~v) Treatment: Hearing disorders in children and adults

(~~iv~~D) Up to twenty (20) clock hours in the major professional area may be in related disorders.

(~~v~~E) At least twenty (20) of the three hundred fifty (350) clock hours must be in speech-language pathology.

(~~vi~~F) A portion of those twenty (20) clock hours must involve the evaluation or screening of individuals with speech and language disorders unrelated to hearing impairment, and a portion must involve the treatment of individuals with speech and language disorders unrelated to hearing impairment.

(d) After December 31, 2006, with the exception of post-masters professional degree (Au.D) applicants and applicants with a Ph.D. with a major emphasis in audiology, audiology applicants must demonstrate completion of a minimum of (1820) supervised clinical practicum hours in audiology through clinical practicum, clinical rotations, or externships during their professional or graduate doctoral degree program. Audiology applicants with a post-masters distance education professional degree (Au.D.) and applicants with a Ph.D. with a major emphasis in audiology must provide evidence of a minimum of (350) supervised clinical practicum hours obtained in audiology through clinical practicum, clinical rotations, or externships during their masters or Ph.D. degree program. In addition, audiology applicants with a post-masters distance education professional degree (Au.D.) or a Ph.D. with a major emphasis in audiology must provide evidence of a completed Clinical Experience of no less than nine (9) months of successful full-time, paid clinical experience in audiology, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended or of one or more persons whose education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure as an audiologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months.

(~~b) **Professional area of supervision.**~~ All clinical practicum, clinical rotations or externships adduced to satisfy this requirement must have been obtained under the supervision of an individual eligible for licensure as a speech-language pathologist or audiologist under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended, and this Chapter. The supervisor of clinical practicum, clinical rotations or externships must be eligible for licensure in the professional area (speech-language pathology or audiology) in which the supervision is provided.

690:10-3-6. Clinical experience requirement

(a) **Clinical experience form.**

(1) Each speech-language pathology applicant shall submit evidence (Clinical Experience Form) of no less than nine (9) months of successful, full time, paid, clinical experience in the area for which a license is required, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601. et. seq., as amended, or of one or more persons whose education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure ~~in the professional area (speech language pathology or audiology) in which the applicant seeks a license.~~ as a speech-language pathologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory

contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months.

(2) Each audiology applicant, until December 31, 2006, may submit evidence (Clinical Experience Form) of no less than nine (9) months of successful, full time, paid, clinical experience in the area for which a license is required, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601. et. seq., as amended, or of one or more persons whose education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure as an audiologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months. Before December 31, 2006, audiology applicants possessing a residential, four-year Au.D. degree or its equivalent will be required to present to the Board only a copy of the Au.D. degree diploma, or its equivalent, from an accredited academic institution in order to demonstrate completion of the clinical rotation or externship requirement. After December 31, 2006, with the exception of audiology applicants with a post-masters distance education professional degree (Au.D.) or applicants with a Ph.D. with a major emphasis in audiology, each audiology applicant will be required to present to the Board a copy of an Au.D. degree diploma, or its equivalent, from an accredited academic institution in order to demonstrate completion of the clinical rotation or externship requirement. After December 31, 2006, audiology applicants with a post-masters distance education professional degree (Au.D.) or applicants with a Ph.D. with a major emphasis in audiology must provide evidence of a completed Clinical Experience of no less than nine (9) months of successful full-time, paid clinical experience in audiology, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended or of one or more persons whose education and experience are the equivalent of an independent practitioner in order to demonstrate completion of the clinical rotation or externship requirement.

(b) **Waiver of clinical experience requirement.** The Board shall waive the clinical experience requirement and grant a license to any applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

690:10-3-7. Examination requirement and exceptions

(a) **Examination.** All applicants for licensure as a speech-language pathologist and/or audiologist must present evidence of successful completion of the examination approved by the Board. The examination must be passed within two (2) years after board approval of the applicant's first application for licensure. Failure to pass the examination within this time period shall result in revocation of authorization to practice under supervision as defined in Subchapter 7 of this Chapter.

(1) The Board designates the Area Examination in Speech-Language Pathology or the Area Examination in Audiology offered as part of the National Teachers Examinations (NTE), Education Testing Service, Princeton, New Jersey, as the State Licensure Examination for speech-language pathologists and audiologists, respectively. It shall be the responsibility of the applicant to assure that his score on the appropriate Area Examination is forwarded by NTE to the Board.

(2) An applicant who fails his examination may be re-examined at subsequent examinations upon payment of another examination fee to NTE. Re-examination of applicants who fail the examination is possible only at regular administrations of the National Teacher Examinations. Arrangements and fees are the responsibility of the applicant.

(3) Exceptions to the two year requirement may be granted by the Board under extenuating circumstances.

(b) **Waiver of examination.** The Board shall waive the examination and grant a license to any applicant who holds

the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(c) **Reciprocity.** An applicant for licensure in speech-language pathology under the reciprocity provisions of Subsection B of Section 1606 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1606. as amended, may be so licensed if he possesses a current license or certificate in speech-language pathology ~~and audiology~~ granted by a legally constituted board (a board established by legislation) and which was granted only on the basis of qualifications which were not less than those of the Act at the time the license was issued. Evidence of equivalence shall be provided by the applicant.

SUBCHAPTER 9. FEES

690:10-9-2. License renewal fee

The license renewal fee shall be ~~sixty dollars ($60.00)~~ seventy-five ($75.00) each calendar year to renew licenses in either or both areas of specialization. Said renewal fee is due on December thirty-first of each year. Failure on the part of any licensed person to pay the renewal fee before the first day of January does not deprive him of the right to renew his license, but the fee paid for renewal postmarked or delivered after December 31st shall be increased ~~by 10% for each month or fraction thereof that the payment is delayed, up to a maximum of twice the renewal fee ($120.00).~~ by 50% for each month or fraction thereof that the payment is delayed, up to a maximum of three times the renewal fee ($225.00). Failure to pay the renewal fee by January 1st, however, shall render his license invalid until renewed. Renewal of an invalid license within the first year will result in an automatic audit of that licensee's continuing education activities for the preceding continuing education two-year reporting period. Failure to renew a license within the twelve month period following expiration, without otherwise placing the license(s) in question on inactive status (see **690:10-9-6**), will render the license permanently invalid, requiring reapplication for licensure based on meeting all current requirements for licensure in the applicant's area of specialization.

[OAR Docket #05-745; filed 5-3-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-730]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Public Policy
Part 5. Filing and Mailing of Documents
710:1-3-30. Timely filing [AMENDED]
710:1-3-31. Sender assumes risk of untimeliness of mail [AMENDED]
710:1-3-32. ~~Registered or certified mail avoids risk~~Documentation to avoid risk of untimeliness [AMENDED]
710:1-3-33. Designated delivery services [NEW]
Part 7. Taxpayer Payments
710:1-3-46. Partial payment of tax liabilities, allocation to taxes, penalty, interest, service charges, and fees [AMENDED]
Part 11. Public Records
710:1-3-71. Rules of the Oklahoma Tax Commission [AMENDED]
710:1-3-72. Decisions of the Oklahoma Tax Commission [AMENDED]
Part 13. Other Policy Provisions
710:1-3-82. Calculation of amount of nonresident contractor bond to be posted [AMENDED]
Subchapter 5. Practice and Procedure
Part 3. Description of Administrative Review and Hearings
710:1-5-17. Petitions for declaratory rulings [AMENDED]
PART 5. Administrative Proceedings Related to Tax Protests
710:1-5-46. Dismissal of case [AMENDED]
710:1-5-49. Survival and abatement of protests [NEW]
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ANALYSIS:

Existing Sections 710:1-3-30 through 710:1-3-33, which describe the scope of "timely filing" for claims, statements, and other documents have been amended to reflect certain designated delivery services which will be treated as equivalents to service by the United States Postal system. [**68:221.1**]

Section 710:1-5-46, which sets out the manner in which taxpayer payments are applied, has been amended so as to apply payments to interest, prior to any penalty which may be due. This reflects a policy change which will benefit taxpayers and streamline processing by eliminating manual adjustments in cases of waiver or settlement.

Sections 710:1-3-71 and 710:1-3-72 have been amended to point out the availability of Commission rules and decisions on the Tax Commission website.

Section 710:1-3-82, dealing with nonresident contractor bonds, has been amended to reflect the provisions of Senate Bill 1121, § 3, which limited the threshold amount for which a bond is required to contracts in excess of One Hundred Thousand Dollars ($100,000.00).

Section 710:1-5-17, which sets out procedures for seeking a declaratory ruling from the Commission [**75:307**] , has been amended to reflect Commission policy where a petitioner seeks only an interpretation or application of a statute or case law to a particular set of facts. In this instance the Commission will issue a letter ruling pursuant to *OAC* 710:1-3-73, rather than a declaratory ruling.

Sections 710:1-4-46, which deals with the dismissal of cases, and 710:1-5-49, which deals with the survival and abatement of protests, have been amended to set out and clarify policies for various situations which may arise in the course of administrative proceedings.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 3. PUBLIC POLICY

PART 5. FILING AND MAILING OF DOCUMENTS

710:1-3-30. Timely filing

(a) **General definition.** When the last date for filing any document or performing any act required by the Oklahoma Tax Commission falls on a day when the offices are not open for business, the filing of the document or performance of the act shall be considered **timely** if it is performed by the end of the next business day.

(b) **When filing is by mail, timely filing shall be defined as follows.** If any claim, statement, or other document required by law or agency Rule to be filed within a prescribed period, or on or before a prescribed date, is delivered after the prescribed period or date, by the United States Postal Service or other delivery service designated by *OAC* 710:1-3-33 to the Oklahoma Tax Commission, at 2501 Lincoln Boulevard, Oklahoma City, Oklahoma 73194; the date of the United States postmark, stamped on the cover in which the claim, statement, or other document is mailed or the date recorded pursuant to *OAC* 710:1-3-33 by a designated delivery service shall be considered to be the date of delivery.

(c) **Application.** This provision shall apply~~.~~:

(1) Determined with regard to any extension of time granted for the filing;

(2) Only if the postmark date or date recorded by a designated delivery service falls within the prescribed period, or on or before the prescribed date~~,~~ for filing ~~of~~ the claim, statement, or other document; and,

(3) Only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States or placed with a designated delivery service, in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

710:1-3-31. Sender assumes risk of untimeliness of mail

(a) The sender who relies upon the applicability of the definition of **timely filing** in 710:1-3-30 by mailing a claim, statement, or other document, assumes the risk that the postmark will bear a date, on or before the last date or day, of the period prescribed for filing the document.

(b) If the postmark on the envelope or wrapper is not legible or the envelope is unavailable, the person who is required to file the document has the burden of proving ~~the time~~ when the postmark was made or when the claim, statement, or other document was placed for delivery with a designated delivery service. [**See:** *OAC* 710:1-3-33]

710:1-3-32. ~~Registered or certified mail avoids risk~~Documentation to avoid risk of untimeliness

(a) If a document is sent by United States Registered Mail or by a delivery service designated in *OAC* 710:1-3-33, the date of registration of the document shall be treated as the postmark date.

(b) If a document is sent by United States Certified Mail or by a delivery service designated in *OAC* 710:1-3-33, and the sender's receipt is ~~postmarked~~ dated by the ~~U.S. Postal Service~~ service's employee, the date ~~of the United States postmark~~ on the receipt shall be treated as the postmark date of the document.

710:1-3-33. Designated delivery service

(a) For purposes of filing any document or performing any act required by the Oklahoma Tax Commission, in addition to the United States Postal Service (USPS), the Commission may designate delivery services that are substantially equivalent to USPS registered or certified mail.

(b) To qualify as a designated delivery service, the service must:

(1) Be available to the general public;

(2 Be as timely and reliable, on a regular basis, as the USPS; and,

(3) Record electronically to its data base, kept in the regular course of business, the date on which the item was given to the service for delivery; or,

(4) Mark on the cover of the item to be delivered, the date on which the item was given to the service for delivery.

(c) The private delivery services set out in this subsection have been designated by the Tax Commission as meeting the required standards prescribed in (b) of this Section.

(1) Airborne Express (Airborne)

(A) Overnight Air Express Service

(B) Next Afternoon Service

(C) Second Day Service

(2) DHL Worldwide Express

(A) DHL "Same Day" Service
(B) DHL USA Overnight
(3) Federal Express (FedEx)
(A) FedEx Priority Overnight
(B) FedEx Standard Overnight
(C) FedEx 2 Day
(D) FedEx International Priority
(E) FedEx International First
(4) United Parcel Service (UPS)
(A) UPS Next Day Air
(B) UPS Next Day Air Saver
(C) UPS 2nd Day Air
(D) UPS 2nd Day Air A.M.

(d) Only the designated private delivery services and the types of services listed in (c) of this Section qualify for consideration under the "timely filing" provision in 68 O.S. § 221.1. The designated private delivery services listed in this Section are effective until the Commission amends the list.

(e) The "timely filing" rule, *OAC* 710:1-3-30, does not apply if a taxpayer uses a business that contracts with a designated delivery service, but the business is not itself a designated delivery service.

PART 7. TAXPAYER PAYMENTS

710:1-3-46. Partial payment of tax liabilities; allocation to taxes, penalties, interest, service charges, and fees

(a) **Voluntary payments.** Voluntary partial payments of tax liabilities will be applied to such liabilities in the manner designated by the taxpayer, where the taxpayer provides specific written instructions for the application of such payments. If the taxpayer fails to give specific written instructions for the application of a voluntary partial payment, the Commission will allocate and apply such payment in the same manner as provided for involuntary payments.

(b) **Involuntary payments.** The taxpayer has no right to direct or designate the allocation or application of an involuntary payment. In all instances, the Commission will allocate and apply involuntary partial payments in the manner which, in the discretion of the Commission, will best serve the interests of the State. Generally, unless the Commission determines that a different allocation will better serve the State's interests, involuntary partial payments will be allocated and applied in the following manner:

(1) First, to the tax portion of non-trust fund tax liabilities, beginning with the earliest such liability period, and then to the tax portion of each succeeding liability period until all non-trust fund taxes are paid;

(2) Next, to the tax portion of all trust fund tax liabilities, beginning with the earliest such liability period, and then to the tax portion of each succeeding liability period until all trust fund taxes are paid;

(3) Next, to the interest, penalties, ~~interest,~~ service charges, and fees, in that order, associated with non-trust fund tax liabilities, beginning with the earliest such liability period, and then in the same order for each succeeding liability period(s) until all interest, penalties, ~~interest,~~ service charges, and fees associated with non-trust fund tax liabilities have been paid;

(4) Next, to the interest, penalties, ~~interest,~~ service charges, and fees, in that order, associated with trust fund tax liabilities, beginning with the earliest such liability period, and then in the same order for each succeeding liability period(s) until all interest, penalties, ~~interest,~~ service charges, and fees associated with trust fund tax liabilities have been paid.

PART 11. PUBLIC RECORDS

710:1-3-71. Rules of the Oklahoma Tax Commission

(a) **Rules described. "Rules"** of the Oklahoma Tax Commission are formal statements of policy which set out procedures to be followed in the administration of various tax levies and fees. Rules describe broad interpretations of the tax laws, often prescribe forms, and may set out informal and formal procedures for filing, remitting, registering and objecting to the various taxing provisions. Rules may also prescribe procedures for the granting, denial, suspension, renewal, or revocation of various permits and licenses administered by the Commission. Rules are subject to the provisions of Article I of the Oklahoma Administrative Procedures Act (APA), 75 O.S. §§ 250-308.2, and must be promulgated under the terms of the APA before they are considered effective. Rules which have been promulgated have the full force and effect of law and continue in effect until amended or revoked under APA provisions.

(b) **Availability.** Current Rules, both permanent and emergency, of the Oklahoma Tax Commission are available on the Oklahoma Tax Commission website at http://www.oktax.state.ok.us or from Taxpayer Assistance Division, ~~Room 4-18,~~ M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours.

710:1-3-72. Decisions of the Oklahoma Tax Commission

(a) **Decision defined.** A **"decision"** of the Oklahoma Tax Commission means a final determination in an adversarial hearing on an individual tax protest or claim, including a Commission order in writing which is made, entered, and mailed to a taxpayer pursuant to the provisions of the Uniform Tax Procedure Code (68 O.S. § 201, et seq.). Decisions initially rendered from individual tax hearings are considered confidential records. However, decisions from individual tax hearings are available to the public under the grant of authority set out in 68 O.S. § 221(g) and the mandate of Section 302(A)(4) of Title 75 of the Oklahoma Statutes (Administrative Procedures Act).

(b) **Confidentiality.** To protect the identity of individuals, the Decisions of the Oklahoma Tax Commission available for examination by the public utilize fictitious names or have had names and identifying features removed, leaving intact the factual statement, the statement of applicable law, the findings of the Commission, and the disposition of the protest or claim.

(c) **Applicability.** Decisions of the Oklahoma Tax Commission may be broadly categorized into two groups: Precedential and Non-precedential. A Precedential decision is one in which the findings are applicable to a broad spectrum of taxpayers and in which the interpretation of law embodied in the holding may appropriately be relied upon prospectively by the Commission and by the public. A non-precedential decision is generally one in which the rule of law expressed is unique to the fact situation of the particular case.

(d) **Availability.** Decisions are available from ~~Tax Policy and Research~~ the Administrative Proceedings Section, ~~Division, Fifth Floor,~~ M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours and may be accessed through the Tax Commission website at http://www.oktax.state.ok.us .

PART 13. OTHER POLICY PROVISIONS

710:1-3-82. Calculation of amount of nonresident contractor bond to be posted

(a) Along with the notice of contract and a bond in the penal sum of three times the tax liability incurred or to be incurred by a nonresident contractor with a contract in excess of One Hundred Thousand Dollars ($100,000.00), an estimation for the tax liabilities incurred or to be incurred is to be filed on a form or in a format as required by the Oklahoma Tax Commission, setting out the tax base and the estimated tax liability, to include, but not be limited to the following taxes, as applicable:

(1) Ad valorem taxes
(2) Aircraft excise taxes and registration fees
(3) Employment security tax
(4) Employee withholding tax
(5) Franchise tax
(6) Income tax
(7) Motor fuel tax
(8) Motor vehicle excise taxes and registration fees
(9) Sales and use tax
(10) Payments for worker's compensation coverage

(b) In the absence of the filing of the estimation of tax liability required above, it will be presumed that the bond required to be filed will be ten percent (10%) of the amount of the contract less the amount of any bonds posted by any subcontractors who are also nonresident contractors.

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

710:1-5-17. Petitions for declaratory rulings

(a) **General provisions.** The Commission or its duly authorized agent may issue declaratory rulings, as to the applicability of any **rule** or principle of law embodied in a precedential **decision** of the Commission, which is requested by or on behalf of a person directly affected thereby, subject to the terms and conditions set forth in this Section.

(b) **Form of petition; where to file.** A declaratory ruling petition must be made in writing and sent in duplicate to the Secretary-Member, Oklahoma Tax Commission, 2501 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

(c) **Contents of a petition for a declaratory ruling.** A declaratory ruling petition must specifically state:

(1) That a "declaratory ruling is requested pursuant to 710:1-5-17";

(2) The petitioner's

(A) Name (the name of the person, partnership, corporation or entity to whom the facts presented in the petition apply);

(B) Address and phone number;

(C) Social Security or federal identification number; and

(D) Appropriate OTC license, registration or identification number, where applicable.

(3) The type of tax, fee, bond, registration, license, or permit at issue;

(4) The issue(s) on which a declaratory ruling is requested, stated clearly and concisely;

(5) A complete, clear and concise statement of all relevant facts on which the declaratory ruling is requested;

(6) The petitioner's desired result and the legal basis for that result, including reference to the applicable statutes, rules, regulations, and case law;

(7) Whether the issue, as it regards the petitioner, is presently under investigation or audit by the Commission or any of its agents. The term investigation or audit includes, but is not limited to, an inquiry, audit, refund, assessment, suspension or revocation proceeding by the Commission; and

(8) Whether the petitioner is presently pursuing any protest, litigation or negotiation on the issue with the Commission or any of its Divisions, as well as the name of any other person, partnership, corporation or entity whom the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the Commission.

(d) **Petition must bear authorized signature.** A petition for a declaratory ruling must be signed by the petitioner or an authorized agent of the petitioner.

(e) **Proposed draft may be offered.** The petitioner may provide a **draft** ruling for the Commission's consideration.

(f) **Commission may require additional information.** The Commission or its authorized representative may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition to issue the declaratory ruling.

(g) **Effect of a declaratory ruling.** A declaratory ruling shall have the following effect:

(1) The declaratory ruling shall apply only to the particular fact situation stated in the declaratory ruling petition;

(2) The declaratory ruling shall apply only to the petitioner;

(3) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors only prospectively;

(4) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors as to transactions of the petitioner that occur within three (3) years after the date of the issuance of the declaratory ruling; and

(5) The declaratory ruling may be revoked, altered, or amended by the Commission at any time.

(h) **Exceptions to binding effect of declaratory ruling.** The declaratory ruling shall cease to be binding if:

(1) A pertinent change is made in the applicable law by the Legislature;

(2) A pertinent change is made in the Commission's rules;

(3) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or

(4) The actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.

(i) **Issuance of a declaratory ruling.** The Commission will make a good faith effort to issue a declaratory ruling within ninety (90) days from date of receipt of a complete and proper petition unless, in the Commission's discretion, the issue is of such complexity or novelty that additional time is required.

(j) **Contents of a declaratory ruling.** A written response from the Commission or from any employee or agent of the Commission to an inquiry from a taxpayer may not be construed to be a declaratory ruling unless made in conformity with this Subsection. A declaratory ruling must contain:

(1) A statement that: "This is a declaratory ruling issued by the Oklahoma Tax Commission pursuant to 75 O.S. 1991, § 307;" and

(2) The signature of the Commission or any person duly authorized to issue declaratory rulings on its behalf.

(k) **Denial of a petition for declaratory ruling.** The Commission, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Commission, in a letter, will indicate the reason(s) for refusing to issue the declaratory ruling. Good cause includes, but is not limited to, the following:

(1) The petition does not substantially comply with the information required by this section;

(2) The petition involves hypothetical situations or alternative plans;

(3) The petitioner requests the Commission to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;

(4) The facts or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue the declaratory ruling;

(5) The issue about which the declaratory ruling is requested is primarily one of fact;

(6) The issue is presently being considered in a rulemaking proceeding, protest proceeding or other agency or judicial proceeding that may definitively resolve the issue;

(7) The issue cannot be reasonably resolved prior to the issuance of rules;

(8) The petitioner is under investigation or audit relating to that issue, or the issue is the subject of investigation, audit, administrative proceeding or litigation;

(9) The issue relates to the application of the law to members of a business, trade, professional or industrial association or other similar group(s); or

(10) The petitioner is not identified or is anonymous.

(l) **Withdrawal of a petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.

(m) **Response when declaratory ruling inappropriate.** When ~~an issue on which~~ a declaratory ruling petition requests the Commission to interpret or apply a statute or case law to a specific set of facts, ~~is requested is clearly covered by a duly enacted statute, rule, administrative decision or a well-established principle or interpretation of the law,~~ the Commission ~~may~~ will issue a ~~policy statement~~ letter ruling, as described in *OAC* 710:1-3-73, instead of a declaratory ruling. ~~A letter ruling is not a declaratory ruling and is not binding on the issuing Division or the Commission. A letter ruling calls attention to a well-established principle or interpretation of the law and is merely a response for informational purposes.~~

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-46. Dismissal of case

~~(a) **Who may file.** A Motion to Dismiss may be filed by either party in an administrative proceeding related to a tax protest, and the Administrative Law Judge, upon his or her own motion, may give notice of intent to dismiss, stating grounds for dismissal.~~

~~(b) **Procedure in dismissal.** Notice of a Motion to Dismiss filed by the tax division or the taxpayer, or an intent to dismiss issued by the Administrative Law Judge shall be sent to all parties or their authorized representatives by mail. A notice to appear at a certain time, date and place and show cause why such case should not be dismissed should be sent with the dismissal. Notice shall be given at least fifteen (15) days prior to the show cause hearing. If taxpayer fails to appear at the hearing or to respond to the notice, the Administrative Law Judge may recommend to the Commission that an order of dismissal be entered fixing the deficiency as the amount determined by the Tax Commission or that an order be entered disposing of the case consistent with the position last taken by the tax division.~~

(a) **Voluntary dismissal.** A protestant may dismiss his or her protest, or the tax division whose action or proposed action has been protested may withdraw its action or proposed action, without a motion therefor, at any time prior to the entry of a final order by the Commission.

(b) **Dismissal for mootness.** "**Moot**", for purposes of this Subchapter means that a case presents no actual controversy or that the issues have ceased to exist. A protest that is or has become moot may be dismissed by the Commission or by the

Administrative Law Judge on their own motion or on the motion of a party. At least fifteen (15) days' notice of the motion or intent to dismiss shall be given to all parties, who shall have the opportunity to respond and show cause why the protest should not be dismissed. A dismissal by the Administrative Law Judge is appealable to the Commission in the same manner as appeals from other rulings by the ALJ.

(c) **Dismissal for lack of jurisdiction.** The Tax Commission is without jurisdiction to consider a protest that is not filed within the time provided by statute. The question of the Commission's jurisdiction to consider a protest may be raised at any time, by a party, the Administrative Law Judge, or the Commission itself. Questions as to the authority, propriety, or timeliness of the tax division's action or proposed action shall not be raised by a motion to dismiss, but shall be raised as defenses to such action or proposed action, as a part of or addition to the protest.

(d) **Motion to dismiss.** A motion filed by a party to dismiss a protest for lack of jurisdiction, or a notice by the Administrative Law Judge or the Commission of intent to dismiss a protest on jurisdictional grounds, shall state the reasons therefore, shall be filed in the case, and shall be mailed to all parties or their authorized representatives. The motion or notice of intent to dismiss shall be set for hearing, which shall not be less than fifteen (15) days after the filing of such motion or notice of intent, at which time any party opposing such motion or notice of intent may appear and show cause why the protest should not be dismissed. Notice of the date, time and place of the hearing shall be mailed to the parties or their representatives along with the motion or notice of intent to dismiss.

710:1-5-49. Survival and abatement of protests

No protest pending before the Tax Commission shall abate by the death of the protestant. Consideration of such a protest shall proceed according to the following:

(1) **Death of protestant where no hearing has been requested.** If a taxpayer dies subsequent to the filing of a protest and no oral hearing has been requested, the Commission shall proceed without further notice to examine the merits of the protest and enter an order in accordance with its findings.

(2) **Death of protestant prior to hearing.** If a taxpayer has requested a hearing as provided by law but dies before such hearing, and the Commission is apprised of such death, notice of the proceedings and any upcoming hearing shall be mailed to taxpayer's address as last given in connection with the protest proceeding, and addressed to taxpayer, taxpayer's estate, or taxpayer's personal representative. Taxpayer's personal representative or persons who demonstrate a legal interest in taxpayer's estate shall be given a opportunity to appear and to be heard in connection with the protest proceedings. If, after such notice, there is no appearance or substitution by such persons in the protest proceedings, the protest shall not be dismissed or decided as by default, but the merits of the protest shall be examined and an order confirming, modifying, or vacating the prior action or proposed action shall be entered, as in a case where no hearing has been requested.

(3) **Death of protestant after hearing or submission of case.** If a taxpayer dies after a requested hearing or after the matter has been submitted for decision, findings, conclusions and a recommendation as to the final disposition of taxpayer's protest may be entered by the Administrative Law Judge, and a final order may be entered by the Commission, although the personal representative of the taxpayer or other person has not been substituted as a party to the proceeding. Notice of the findings, conclusions and recommendation of the Administrative Law Judge and of the Commission's final order shall be given to the taxpayer's personal representative or other such person who has demonstrated a legal interest in the estate of the deceased taxpayer and who has requested such notice.

(4) **Substitution of personal representative.** Taxpayer's personal representative may be substituted for the taxpayer on motion of a party with notice to the representative, and shall be substituted for the taxpayer upon application by the representative. [**See:** OTC Order No. 96-02-13-017]

[OAR Docket #05-730; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM TAX

[OAR Docket #05-732]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
710:10-1-4. Limitation of the fair cash value on homestead property of qualified owners; implementation of Article 10, Section 8C of the Oklahoma Constitution [AMENDED]
Subchapter 3. Equalization Study
Part 5. Authorities and Methodology
710:10-3-63. School funding code compliance [AMENDED]
Subchapter 5. Homestead Exemption
710:10-5-7. Undivided interests in homesteads [AMENDED]
710:10-5-10. Filing an application [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-1. Purpose [AMENDED]
710:10-7-2. Requirements for exemption for qualified manufacturing facilities established, expanded, or acquired, on or before July 1, 2003 [AMENDED]
710:10-7-2.1. Manufacturing facility exemption for facilities which are established, expanded, or acquired on or after January 1, 2000 [AMENDED]
710:10-7-5. Date of qualification; application for exemption [AMENDED]
710:10-7-8. Property ~~engaged~~ used in a manufacturing facility [AMENDED]
710:10-7-10. Examination and inspection of property and records [AMENDED]
710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection [AMENDED]
710:10-7-13. Hearings before County Board of Equalization [AMENDED]
710:10-7-14. Appeal from Board of Equalization to district court [AMENDED]
710:10-7-15. Review; protest; appeal [AMENDED]

710:10-7-16. County recording procedure for assessment and tax rolls [AMENDED]
710:10-7-17. Fair cash value [AMENDED]
710:10-7-24. Assessor's report to Excise Board; abstract of assessment [AMENDED]
710:10-7-25. County claim for reimbursement; funding shortfall [AMENDED]
Subchapter 14. Full Fair Cash Value Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-1. General provisions [NEW]
710:10-14-2. [RESERVED]
710:10-14-3. Relationship to other exemptions and programs [NEW]
710:10-14-4. Qualified owner [NEW]
710:10-14-5. Application [NEW]
710:10-14-6. Duties of the assessor [NEW]
710:10-14-7. Right of appeal [NEW]
710:10-14-8. Duration; conditions which terminate the exemption [NEW]

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68 O.S. §§ 203, 2817, 2875, 2891, 2898, and 2902; Oklahoma Tax Commission

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n/a

ANALYSIS:
Proposed amendments to **Subchapter 1**, *"General Provisions"*, have been made to implement State Question 714 (Senate Joint Resolution 30) which amended Section 8C, Article 10, of the Oklahoma Constitution, altering the manner in which qualifying income levels are determined for purposes of the limitation of valuation on homestead property for seniors, age 65 and older. (710:10-1-4 was promulgated as an emergency rule, approved by the governor on December 20, 2004, and has been in effect since January 1, 2005.)

The sole amendment to **Subchapter 3**, *"Equalization Study"*, is to replace some obsolete references with current terminology.

Proposed amendments to **Subchapter 5**, *"Homesteads Exemption"*, have been made to clarify ambiguous language, to ensure that citation is accurate, and to conform the rules to existing statutes.

Proposed amendments to **Subchapter 7**, *"Manufacturing Facilities"*, have been made to implement statutory changes enacted by the 49th Legislature, 2nd Regular Session. Sections in this Subchapter have been amended to reflect changes in certain qualification criteria, to delete obsolete language, and to clarify policy. [SB 300(2003)]

Proposed new **Subchapter 14**, *"Full Fair Cash Value Exemption for One Hundred Percent Disabled Veterans"* has been added to implement the provisions of State Question 715, which amended Section 8E, Article 10, of the Oklahoma Constitution, providing for a property tax exemption for veterans having a 100% service-related disability, effective January 1, 2006.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

710:10-1-4. Limitation of the fair cash value on homestead property of qualified owners; implementation of Article 10, Section 8C of the Oklahoma Constitution

The procedures and requirements set out in this Section shall be used to implement the limitation of the valuation on homestead property of qualified owners for ad valorem purposes:

(1) **General provisions. "Senior valuation limitation"** means the implementation of ~~the constitutional amendment added to the~~ Oklahoma Constitution, Article ~~X~~ 10, Section 8C, ~~by State Question 677,~~ which directed county assessors to limit the fair cash value of the homestead property of any qualified person who has made proper application. The applicant's property must be a valid homestead property, with proper evidence of a homestead or an application made in 1997 or subsequent years. As with any homestead, the general statutes for homestead qualification apply to the limitation. Only one homestead, and by extension, only one limitation is permitted in any one year. The limitation applies only to the occupied homestead property and may not be applied to non-homestead property. [**See:** ~~68 O.S.1991,~~ 68 O.S.2001, §§ 2888, 2889, 2890, 2893~~; 68 O.S.Supp.1996, § 2890~~]

(2) **Relationship to exemptions and other programs.** The senior valuation limitation is available to qualified owners in addition to participation in the circuit breaker and additional homestead exemption. [**See:** 68 O.S. § 2802, for definitions of **"circuit breaker"** and **"additional homestead exemption".**] Availability of the senior valuation limitation **is not** dependent upon the county's compliance status with the State Board of Equalization.

(3) **Qualified owner.** The taxpayer must be 65 the year before the senior valuation limitation is approved, and the applicant's total household annual income for the previous year must not exceed ~~$25,000.00~~ the amount as provided in the Oklahoma Constitution, Article 10, Section 8C. The income threshold for the gross household income from all sources for an individual head of household under this

Section shall not exceed the amount determined by the United States Department of Housing and Urban Development to be the estimated median income for the preceding year for the county or metropolitan statistical area which includes such county. The Tax Commission shall provide this information to each county assessor each year, as soon as it is available.

(4) **Application; qualification; duties of assessor; right of appeal.** In order to be eligible for the senior valuation limitation, the individual must apply at the county assessor's office by completing **OTC Form 994 (Revised-04)**, **Application for Property Valuation Limitation and Additional Homestead Exemption.** The application must be made between January 1 and March 15. However, the time within which to apply for **additional homestead exemption** may be extended thirty (30) days, if a Notice of Change in Assessed Value (OTC Form 926-R-87) is sent, as stipulated in 68 O.S. § 2890(C). The limitation will be in affect for the tax year in which the application is made and approved, based on the current year valuation.

(A) For the limitation to be valid, **OTC Form 994 (Revised-04), Application for Property Valuation Limitation and Additional Homestead Exemption**, must be completed in its entirety as to income, age, ownership, and other information.

(B) The county assessor has the right and duty to review the information provided, ask any necessary questions, request documentation of age, income, or other information.

(C) The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Section.

(D) The county assessor may request assistance from the Oklahoma Tax Commission in determination of income qualifications under ~~68 O.S.1991, Section~~ 68 O.S.2001, § 2890.

(E) The taxpayer may appeal any denial of a senior valuation limitation application by the county assessor to the county board of equalization in the same manner as an appeal of the denial of a homestead exemption.

(5) **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review shall **not** include a revaluation of the property solely because it may be below fair cash value.

(6) **Physical improvements to property.** If a physical improvement is made to the property, such as a room addition, additional square footage, garage, out buildings, enclosed garage, or similar improvement, the improvement shall be valued in the same manner as these improvements are presently valued. This additional valuation shall be added to the limited value of the property before the construction occurred. If improvements are added to the property, the fair cash value shall be increased by the amount attributable to the addition. The new total value is then limited again, so long as the owner and property remain qualified. Physical additions or changes that are considered normal maintenance, such as normal repairs, minor re-modeling, roof repair or ~~installation~~ insulation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps to provide access to the property, are not generally considered physical improvements affecting the valuation limitation.

(7) **Duration of, and conditions which terminate the limitation.** The senior valuation limitation is valid on the property as long as the taxpayer owns and occupies the property and title to the property is not transferred, changed, or otherwise modified. If the taxpayer fails to own and occupy the property or if title to the property is transferred, changed, or conveyed to another person, the senior valuation limitation shall expire. It is then the responsibility of the county assessor to value the property at fair cash value consistent with constitutional provisions, statutes and applicable rules. If the person's gross household income from all sources exceeds ~~$25,000.00~~ the amount provided in the Oklahoma Constitution, Article 10, Section 8C, the senior valuation limitation shall expire and the value of the property shall be subject to the five percent limitation increase for that year.

(8) **Instances in which tax amount may increase, despite limitation.** The senior valuation limitation applies to the valuation, but it does not limit all taxes. The tax amount could increase under three specific situations:

(A) If an additional millage such as a bond issue or other levy is added;

(B) If judgment is rendered against the county and a judicial order directs an additional levy; or,

(C) If the county voters adopt a measure increasing the assessment percentage within the county under the authority of Section 8, Article ~~X~~ 10, of the Oklahoma Constitution.

SUBCHAPTER 3. EQUALIZATION STUDY

PART 5. AUTHORITIES AND METHODOLOGY

710:10-3-63. School funding code compliance

(a) Each assessment and equalization analyst will note sale samples taken from the visual inspection area of the counties assigned.

(b) These samples will be taken in the area shown on the plan filed with the Oklahoma Tax Commission as being inspected for the current year.

(c) These samples are to be used to determine if visual inspection is being implemented according to the plan filed with the Oklahoma Tax Commission and that the filed plan is verifiable.

(d) The analyst will also check a sufficient number of the property ~~identification cards~~ assessment records in the visual

inspection area against the actual existing structure to determine if actual physical inspections are being made and proper appraisal techniques are being applied.

(e) The analyst will report the lack of property ~~identification cards~~ assessment records, inadequate property ~~identification cards~~ assessment records, and other discrepancies upon a worksheet for that function. A copy of the present compliance report may be obtained from the Ad Valorem Tax Division and will be updated periodically to conform to current law and changing requirements as determined by the Director of the Ad Valorem Tax Division.

(f) This Section is not part of the normal equalization study but is part of the Oklahoma Tax Commission's parallel duties prescribed by law. The enforcement of the school funding code compliance or visual inspection statutes is not the statutory or constitutional duty of the State Board of Equalization. [**See:** 70 O.S.1991, §18-109.1]

SUBCHAPTER 5. HOMESTEAD EXEMPTION

710:10-5-7. Undivided interests in homesteads

(a) **Undivided interests in general.** A person ~~owning an undivided interest in his~~ who is a citizen of Oklahoma, that resides and is domiciled in a residence is entitled to a homestead exemption, in the amount of his undivided interest. For example, if the person is residing upon land in which he owns an undivided one-half interest, he is entitled to an exemption of $500.00. If his undivided interest is one-fourth, he is entitled to an exemption of $250.00. [**See:** ~~68 O.S.1997,~~ 68 O.S. §§ 2888, 2833]

(b) **Exception for undivided interest in a parent and child.** If a parent and a child or children own a house jointly, but the parent is the only person residing in the house, the parent is entitled to the full exemption, up to One Thousand Dollars ($1,000.00). [**See:** 68 O.S. § 2888]

(~~b~~c) ~~**Undivided interests in**~~ **Retention of homestead by a surviving spouse or minor child.** ~~A different situation however, arises where the surviving spouse of a deceased person or his/her minor children reside on the property and actually own an undivided interest. In so far as the surviving spouse is concerned, (s)he has a life estate in the property and it is his/her home as long as (s)he lives there. The surviving spouse or minor children is/are entitled to the full exemption, up to $1,000.00, even though undivided interests may be owned by other heirs not residing on the property. [**See:** 68 O.S.1997, § 2888; 58 O.S. §311]~~ The surviving spouse or minor children, or both, of a deceased person shall be considered to be the record owners of a homestead if the title of record is in the office of the county clerk on January 1, in the name of the deceased. For example, if one spouse is listed as the record owner of the residency on January 1, and that spouse dies that year, the surviving spouse or the decedent's children will still be able to claim the homestead exemption for that year, even though they are not listed as the owners of record in the office of the county clerk. [**See:** 68 O.S. § 2888]

~~(c) **Undivided interest in a duplex also a residence.** A person who owns an undivided one-half interest in a duplex and occupies one of the apartments, consisting of five rooms, and the other apartment, consisting of six rooms, is rented out, is entitled to an exemption of five elevenths of one half of the homestead (5/22) or $227.00. [**See:** 68 O.S.1997, §§ 2888, 2833]~~

710:10-5-10. Filing an application

(a) **Application restriction.** In order for any person to obtain an ~~initial permanent~~ exemption on his homestead ~~for any year,~~ an application must be filed with the County Assessor on forms prescribed by the Tax Commission, on or before March 15th of that year. ~~If the application for a homestead exemption is filed after March 15th, a homestead exemption cannot be allowed for that year.~~ However, the time within which to apply for the homestead exemption may be extended by thirty (30) days from receipt of a Notice of Change of Assessed Value (OTC Form 926-R-87) by the taxpayer. Applications may be accepted by the county assessor throughout the year, however, applications filed after March 15, or after 30 days from receipt of a Notice of Change of Assessed Value, whichever is later, will not be effective until the following year.

(b) **Who may sign application.** ~~The Act provides that the~~ The application shall be signed by the owner of the property, or in case of minors or incompetents, by the guardian. Either husband or wife may sign an application if joint title is held by both parties. Similarly, an adult child may sign for the parents, if title to the property is jointly held between them. Other agents for taxpayers may not sign an application for an exemption, unless the owner is currently a member of the Armed Services of the United States, during time of war or a national emergency. Persons sixty-five (65) years of age or older, as of March 15, who have previously qualified for the additional homestead exemption or the limitation of fair cash value of homestead property, shall **not** be required to make an annual application, provided all qualifications are maintained. [**See:** ~~68 O.S.Supp.1997, §§ 2890, 2890.1~~ 68 O.S. § 2892]

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-1. Purpose

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S.~~1991, §§250~~ § 250 et seq., and to facilitate the administration, determination, and application of the exemption from the ad valorem taxation of property for certain new or expanded manufacturing facilities.

710:10-7-2. Requirements for exemption for qualified manufacturing facilities established, expanded, or acquired, on or before July 1, 2003

(a) **Manufacturing.** In order to be approved as a **"manufacturing facility,"** the facility must be engaged in an activity defined as "manufacturing" by the **Standard Industrial Classification (SIC) Manual** or the **North American Industrial**

Classification System (NAICS), published by the U.S. Office of Management and Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6(B) of the Oklahoma Constitution. Businesses holding a Manufacturers Sales Exemption Certificate from sales and/or use tax are not necessarily eligible for the ad valorem five (5) year Manufacturers Exemption.

(b) **Research and development.** In order to be approved as **"research and development"** the facility must be engaged in activities so defined by 68 O.S.1994, § 2902(B)(4), which states that "*research and development shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*". The **qualifying** Industrial Group Number in the SIC or NAICS Manual will be determined by the Commission.

(c) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in this subsection.

(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S. § 2902]

(2) For applications received by the county assessor:

(A) **On or before July 1, 2003.** The net increase in payroll shall be Two Hundred Fifty Thousand Dollars ($250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) in capital improvements, while maintaining or increasing payroll;

(B) **After July 1, 2003.** The net increase in payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than fifty thousand (50,000) persons; or at least One Million Dollars ($1,000,000.00) for applicants located in counties with populations of fifty thousand (50,000) persons or more. In the case of applications made pursuant to 68 O.S. § 2902(C)(6), there must be a net increase in payroll at the facility of at least Two Hundred Fifty Thousand Dollars ($250,000.00) attributable to the capital improvements, or a net increase of Seven Million Dollars ($7,000,000.00) in capital improvements, while maintaining or increasing payroll.

(C) **Health care benefit plan required.** All facilities must offer, within one-hundred eighty (180) days of employment, a basic health benefits plan to the full time employees of the facility, pursuant to 68 O.S.Supp.2003, § 2902(C)(4)(b).

(3) A manufacturing concern, which does not meet the payroll requirement, shall submit with the initial application for exemption, an affidavit to the Oklahoma Tax Commission, signed by an officer. This affidavit will state that from the start of the initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for up to three (3) years, whichever occurs first, will result in a net increase in payroll that meets the qualification criteria. ~~The affidavit will not be valid unless submitted with and at the same time as the initial application.~~

(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(5) The amount of increased payroll may include payroll for FTE in this State who are employed by an entity other than the facility which has otherwise qualified for the exemption. The Tax Commission shall audit all payroll submissions.

(6) **"Annualized payroll"** when used in this Section means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.

(d) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S.Supp.2003, § 2902(A)]

(e) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

710:10-7-2.1. Manufacturing facility exemption for facilities which are established, expanded, or acquired on or after January 1, 2000

(a) **Manufacturing facility.** "**Manufacturing facility"** means a facility engaged in mechanical or chemical transformation of materials or substances into new products. . . which have received a manufacturers exemption permit pursuant to the provisions of 68 O.S.Supp.1999, § 1359.2, and all the facilities and establishments described in 68 O.S. § 2902(B)(1)(b)-(d). [**See:** 68 O.S.~~Supp.1999,~~ § 2902(B)(1)]

(b) **Facilities with sales tax exemptions.** The Tax Commission shall honor all manufacturer's limited exemption certificates issued prior to November 1, 1998. However, holders of such certificates shall apply for a Manufacturers Sales Exemption Certificate pursuant to the provisions of 68 O.S. § 1359.2. Businesses holding a Manufacturers Sales Exemption Certificate from sales and/or use tax must qualify for all conditions of eligibility in 68 O.S.~~Supp.1999,~~ §2902.

(c) **Research and development. "Research and development"** means activities directly related to and conducted for the purpose of discovering, enhancing, or increasing or improving future or existing products or processes or productivity. [**See:** 68 O.S.~~Supp.1999,~~ § 2902(B)(4)]

(d) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in (1) through (4) of this subsection.

(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S.~~Supp.1994,~~ § 2902]

(2) For applications submitted on or before July 1, 2003, the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition

or expansion occurred. Facility or facilities shall mean and include the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process. Equipment that is a direct replacement is not eligible for exemption.

(3) While maintaining the number of FTE's required by previous statutes:

~~(A) For applications submitted after Dec. 31, 1999, and before July 1, 2003, a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in payroll, or a net increase of Five Hundred Thousand Dollars ($500,000.00) or more, in capital improvements in the calendar year in which the construction, acquisition, or expansion has occurred, while maintaining or increasing payroll is required. Payroll shall remain level or be increased for the full five years of the exemption.~~

(~~B~~A) For applications submitted after Dec. 31, 2000, and before July 1, 2003, a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) or more, in capital improvements in the calendar year in which the construction, acquisition, or expansion has occurred, while maintaining or increasing payroll is required during the full five years of the exemption.

(~~C~~B) For applications submitted after July 1, 2003, a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll for facilities located in counties with a population of fewer than Fifty Thousand (50,000) persons in the calendar year in which the construction, acquisition, or expansion has occurred. For facilities located counties with a population of Fifty Thousand (50,000) persons or greater, the net increase in annualized payroll is One Million Dollars ($1,000,000.00) in annualized payroll. [**See:** 68 O.S.Supp.2003, § 2902]

(~~D~~C) To determine base-line payroll, the Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission (OESC) by using the average of the third and fourth quarter OESC reports of the calendar year immediately preceding the year for which initial application is made. [**See:** 68 O.S.~~Supp.1999,~~§ 2902(C). For subsequent year applications for exemption, payroll shall also be calculated using the average of the preceding third and fourth quarters' payroll, as certified by the OESC, immediately preceding the January application date.

(i) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Commission, with the initial application ~~for~~ year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion - to the completion of said construction, acquisition, or expansion, or for three (3) years, which ever occurs first, the establishment or expansion of the facility will result in a net increase of the required annualized payroll. The amount of increased payroll may include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section.

(ii) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility [**See:** 68 O.S.~~Supp.2000,~~ § 2902(C)(4)(b).] Calculation of the number of employees shall be made in the same manner as required under 68 O.S.~~Supp. 1997,~~ § 2357.4 for an investment tax credit.

(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(e) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition. [**See:** Art. 10, Section 6B, Okla. Const.] This requirement shall be construed as a qualification for a facility to initially receive an exemption and not as a qualification for that facility to continue to receive an exemption in each of the four (4) subsequent years following the year that the exemption was granted. [**See:** 68 O.S.Supp.2003, § 2902(A)] The FTE or payroll requirements for eligibility will be determined based on the year in which the acquisitions were obtained.

(f) **Transfer of exemption.** If a facility has initially qualified for an exemption on or after January 1, 1999, and ownership of the facility changes during the five-year period of the exemption, the exemption shall continue in effect for the balance of the five-year period, provided all qualification criteria set by statute are met by the new owners of the facility. Annual application for the exemption must be filed with the county assessor as required by statute. [**See:** 68 O.S.Supp.2003, § 2902(C)(1)]

710:10-7-5. Date of qualification; application for exemption

(a) The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.

(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.

(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption ~~by~~ on or before March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later that June 15 of the **TAX** year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [**See:** 68 O.S.~~Supp.1997,~~ § 2902]

710:10-7-8. Property ~~engaged~~ used in a manufacturing facility

Real and personal property exempted from ad valorem taxation pursuant to this Subchapter must be ~~such as is used in or necessarily incident to the conduct of the manufacturing activity~~ used directly and exclusively in the manufacturing process. [**See:** 68 O.S. § 2902(B)(3)]

710:10-7-10. Examination and inspection of property and records

Manufacturing facilities claimed for ad valorem manufacturing exemption, as well as facilities not claimed for exemption, in the case of expanded facilities, and all books, records and papers pertaining thereto, shall be made available by the owner for inspection by the County Assessor or his deputies, the County Board of Equalization, or authorized representatives of the Commission. Failure or refusal by a property owner to allow inspection or to furnish all information requested or required within thirty (30) days from written notification, shall be reason for voiding the application for exemption, and the property shall be assessed from the best information available and the property owner shall be estopped from contesting the amount or validity of any assessment as to that property. [**See:** 68 O.S.~~1991,~~ § 2945]

710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection

(a) The County Assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law. In determining whether the exemption application is to be approved, the assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law.

(b) The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each completed application received, whether approved or rejected, and shall immediately forward a copy of each application, whether approved or rejected, to the Oklahoma Tax Commission Ad Valorem Division. The original of each application, whether approved or rejected, shall be delivered to the County Board of Equalization, on or before the fourth Monday in April each year for its review.

(c) If the manufacturer's first year application is approved, the assessor shall mark the ~~OTC Form 900 XMA-B,~~ Notice of Approval or Disapproval (OTC Form 900 XMA-B) ~~by County Board of Equilization and County Assessor of Manufacturer's Ad Valorem Tax Exemption,~~ "**APPROVED**". It shall then be the duty of the Oklahoma Tax Commission to make a physical inspection of each facility approved for the exemption, determine the fair cash value of the real property, if necessary, and the personal property separately, and to determine the assessed value of each by applying the assessor's assessment percentage to that value. The Commission shall then notify the County Assessor of the evaluation.

(d) If the assessor finds that the exemption should not be allowed by reason of not being in conformity to the law, he shall mark the Notice of Approval or Disapproval ~~by County Board of Equilization and County Assessor of Manufacturer's Ad Valorem Tax Exemption~~ (OTC Form 900 XMA-B) "**DISAPPROVED**", ~~and state on the OTC Form 900 XMA-B,~~ stating the reason for the disapproval, and shall notify the applicant at the address shown in the application. The notice shall be mailed on or before the fourth Monday in April. The assessor shall then immediately proceed to value and assess the property, as provided by law.

710:10-7-13. Hearings before County Board of Equalization

In case the County Assessor or County Board of Equalization disallows or rejects an application for a manufacturing exemption from ad valorem taxation, the applicant may obtain a hearing before the Board by filing a written complaint with the Secretary of said Board (the County Clerk) within ten (10) days from the receipt of the notice. The complaint shall specify the grievances and the pertinent facts in relation the matter, and the Board shall conduct hearings, as provided by statute. [**See:** 68 O.S.~~1991 §~~ § 2895]

710:10-7-14. Appeal from Board of Equalization to district court

The decision of the Board of Equalization as to the exemption of a manufacturing concern from ad valorem taxation may be appealed to the District Court by either the applicant or the county assessor, as provided by law. [**See:** 68 O.S.~~1991 §~~ § 2879]

710:10-7-15. Review; protest; appeal

(a) **Notice of erroneous exemption; assessment.** If the Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, it shall notify the appropriate County Assessor, who shall, after notice as required by law has been given, immediately value and assess the

property and place the property on the tax rolls for Ad Valorem taxation. [**See:** Attorney General Opinion 03-16]

(b) **Notice to applicant.** The Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the County Assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provision of the Uniform Tax Procedure Code. [**See:** 68 O.S. §§ 201, et seq. and the Rules of Practice and Procedure before the Commission, promulgated at 710:1-5-20 through 710:1-5-48 of the **Oklahoma Administrative Code.**]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S. § 225]

710:10-7-16. County recording procedure for assessment and tax rolls

The county recording procedure will be to separately show each approved "exempt manufacturing" facility, which shall include exempt research and development facilities, in its proper place on each real or personal assessment and tax roll, as if it were taxable property. Exempt property shall be designated as "exempt manufacturing" property, the tax calculated, and charged to the treasurer. The Treasurer **will not** bill the owner, because the tax for all "exempt manufacturing" property in the county will be paid by the State Treasurer at the end of the fiscal year, based upon a county claim for reimbursement. The current year's taxes will be reimbursed pursuant to 62 O.S. § 193. [**See:** Attorney General Opinion 03-16]

710:10-7-17. Fair cash value

The fair cash value used for exempt manufacturing personal property for ad valorem tax purposes will be the amount determined by the Oklahoma Tax Commission. The fair cash value used for exempt manufacturing real property ~~will~~ may be determined by the County Assessor with the assistance of the Oklahoma Tax Commission~~, if needed~~.

710:10-7-24. Assessor's report to Excise Board; abstract of assessment

~~Exempt~~ The exempt manufacturing ~~assessment~~ valuations shall be included in the Assessor's Report to Excise Board (SA&I Form 263) and in the Annual Abstract of Valuation and Assessment (OTC Form 917), as ~~if they were taxable~~ for other properties.

710:10-7-25. County claim for reimbursement; funding shortfall

~~The tax on "exempt manufacturing" properties allowed ad valorem exemption in 1996 will be included in the County Claim for Reimbursement which will be filed by the County Commissioners by April 30, 1997, for reimbursement in June, 1997, as provided by the law. [**See:** 62 O.S.1991, §193]~~ Manufacturers Tax exemption reimbursements are to have first priority before any other program utilizing the fund ear-marked for the **"Five-year Ad Valorem Tax Exemption for Oklahoma Manufacturers.** In the event of a shortfall of State funding, County Treasurers would receive less than a full payment. In that event, the Oklahoma Tax Commission shall advise the County Treasurer of the proportion to be applied to each tax bill, and how to ~~handle~~ administer the shortfall. [**See:** Attorney General Opinion 03-16]

SUBCHAPTER 14. FULL FAIR CASH VALUE EXEMPTION FOR DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption of the full fair cash value for homestead property of qualified owners for ad valorem purposes.

(b) The "one hundred percent disabled veterans exemption" refers to the implementation of the constitutional amendment added to the Oklahoma Constitution, Article 10, § 8E, by State Question 715, and is effective January 1, 2006. The amendment directs county assessors to exempt the total amount of the fair cash value of the homestead property of any qualified person who has made proper application. The applicant's property must be a valid homestead property, with evidence of a homestead exemption, or eligible for homestead exemption. As with any homestead-based exemption, the general statutes governing homestead exemption qualification apply to the one hundred percent disabled veterans exemption. Only one homestead, and by extension, only one exemption, is permitted in any one year, per applicant. The exemption applies only to owner-occupied homestead property and may not be applied to any non-homestead property. [**See:** 68 O.S. §§ 2888, 2889, 2890, 2893]

710:10-14-2. [RESERVED]

710:10-14-3. Relationship to other exemptions and programs

Although the general law applies to applicants, since the full fair cash value is exempt from ad valorem tax for qualified applicants, applications for other property tax exemptions are unnecessary.

710:10-14-4. Qualified owner

Applicants must be heads of households who have been honorably discharged from active service in a branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to have one hundred percent (100%) permanent disability sustained through military action or accident, or resulting from a disease contracted while in active service. The exemption extends to the surviving spouses of deceased veterans who qualified under the terms of this Subchapter. Each applicant must provide to the county assessor, a current United States Department of Veterans Affairs benefits award letter that certifies the one hundred percent service-related disability, or that the individual is in receipt of compensation at the one-hundred percent rate.

710:10-14-5. Application

In order to be eligible for the one hundred percent disabled veterans exemption, the individual must apply at the county assessor's office by completing an **Application for 100% Disabled Veterans Property Tax Exemption.** The application should be made between January 1 and March 15th in the same manner as for homestead exemptions. However, if the county assessor becomes aware of an otherwise-qualified applicant at any time during the current tax year, the county assessor may, upon compliance with all qualification criteria, make the appropriate adjustment. If an otherwise-qualified applicant is discovered after the tax roll has been certified, then a tax roll correction may be made pursuant to 68 O.S. § 2871(C)(2). Any applications that are denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the disability rating of any veteran participating in the exemption program is reduced by the U.S. Dept. of Veterans Affairs to less than one hundred percent, the veteran shall immediately notify the county assessor of the change in status.

710:10-14-6. Duties of the assessor

The county assessor has the authority to review any information provided by the applicant, ask any necessary questions, request documentation or any other information that the assessor may feel is relevant for the initial application or any time in subsequent years. The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Subchapter.

710:10-14-7. Right of appeal

The taxpayer may appeal any denial of the exemption application by the county assessor to the county board of equalization in the same manner as an appeal of the denial of a homestead exemption. [**See:** 68 O.S. § 2895]

710:10-14-8. Duration; conditions which terminate the exemption

The 100% Disabled Veterans Exemption is valid on the property as long as the taxpayer or surviving spouse owns and occupies the property and remains eligible for homestead exemption. If title to the property is transferred or qualifications are no longer met, the exemption shall expire and the value of the property shall be subject to valuation the following year pursuant to Oklahoma Constitution, Article 10, § 8B.

[OAR Docket #05-732; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES AND LOW-POINT BEER

[OAR Docket #05-731]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Low-Point Beer
710:20-2-6. Annual state permits and license taxes [AMENDED]
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ANALYSIS:
The existing agency rules on Low-Point Beer have been amended to conform with the provisions of Senate Bill 1543 §1, which provided that retail dealers seeking a special event permit would not be required to separately permit each service unit in the same general vicinity. [**37:163.8**]
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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 2. LOW-POINT BEER

PART 1. GENERAL PROVISIONS

710:20-2-6. Annual state permits and license taxes

(a) **Manufacturers.** Annual permits are required and license taxes are payable to the Oklahoma Tax Commission with respect to low-point beer, and are in addition to licenses which are required to be procured from the judge of the district court. The permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of low-point beer. Permits will not be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission.

(1) **In-state manufacturers.** Before commencing the manufacture of low-point beer, in-state manufacturers of low-point beer must obtain a permit from the Oklahoma Tax Commission. A license tax of Four Hundred Fifty Dollars ($450.00) must be paid as a condition to the issuance of the initial permit, which covers a three-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid every three years. Additionally, an in-state manufacturer may sell not more than five thousand (5,000) barrels annually of its own products directly to consumers by procuring a retail license.

(2) **All other manufacturers.** Before selling or offering for sale low-point beer within this state, each and every other manufacturer of low-point beer, must qualify with the Secretary of State of the State of Oklahoma for a permit to do business within Oklahoma. After so qualifying, each and every other manufacturer must obtain an annual permit from the Oklahoma Tax Commission. A license tax of Five Hundred Dollars ($500.00) must be paid as a condition to the issuance of the initial permit, which covers a one-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid annually.

(b) **Wholesalers.** Annual permits are required and license taxes must be paid to the Oklahoma Tax Commission with respect to low-point beer, and are in addition to any licenses required to be procured from the judge of the district court. Permits are not transferable from one person to another person, but may be transferred from one location to another location. Permits will not be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission.

(1) **In-state wholesalers.** Wholesalers located and doing business in this state must obtain an annual permit from the Oklahoma Tax Commission. A license tax of Two Hundred Fifty Dollars ($250.00) must be paid as a condition to the issuance of the initial permit, which covers a one-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid annually. An annual permit must be secured and an annual license tax must also be paid by wholesalers for each city or incorporated town from which deliveries of low-point beer are made to retail dealers. Provided, if the wholesaler is also the holder of a current in-state manufacturer's permit, the cost of the wholesaler's permit shall be reduced by seventy-five percent.

(2) **Out-of-state wholesalers.** Wholesalers located and doing business outside of Oklahoma, who desire to pay the excise tax on sales to retail dealers, must obtain the annual permit and pay the license tax annually as is required of in-state wholesalers.

(c) **Retail dealers.** Retailers must obtain a permit from the Oklahoma Tax Commission before offering low-point beer for sale to the public. A license tax shall be paid to the Commission before issuance of the permit, and no permit will be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission. With the exception of permits issued for special events, as described in (c)(4) of this Section, permits ~~Permits~~ are not transferable from one person to another person, but may be transferred from one location to another location, with approval of the Commission, and the judge of the district court. Permits are required for each place of business at which low-point beer is served (each room, bar, or other serving unit). An applicant for a retailer permit must supply evidence that a county permit has been obtained, including the date effective and the expiration date of the county permit. Cancellation of the retailer's county permit shall be cause for the Commission to cancel the permit issued to the retail dealer. Payment of the license tax must be by cash, cashier's check, bank draft, or money order, made payable to the Oklahoma Tax Commission. The permits and the license tax required for specific types of retailers are as follows:

(1) **Sale by draught or in original packages, for consumption on or off premises.** A three-year permit is issued upon payment of the license tax of Four Hundred Dollars ($400.00), and compliance with all other requirements. If the dealer has previously been issued a permit to sell in original packages only for consumption off premises, and such permit has not expired, the Commission may credit the retailer with the unused portion of the former permit.

(2) **Sale in original packages only, for consumption on or off premises.** A three-year permit is issued upon payment of the license tax of Two Hundred Fifty Dollars ($250.00), and compliance with all other requirements.

(3) **Sale of low-point beer, either purchased or manufactured by a retailer.** A three-year permit is issued upon payment of the license tax of Five Hundred Fifty Dollars ($550.00), and compliance with all other requirements. A retail dealer who is licensed under this paragraph may sell the low-point beer which the dealer manufactures at any of the dealer's places of business, or from any place owned and operated by an entity which has common owners with the dealer. **"Common owners"** means owners, who together with the dealer, own more than fifty percent (50%) of the interest in the place or entity.

(4) **Sale at a special event.** A per-day license may be issued upon payment of the Five Dollar ($5.00) license tax and compliance with all other requirements. Retail dealers holding special event licenses are not required to obtain a separate permit for each bar or service unit, provided the bars or service units are within the same enclosed area, or if located outdoors, are within the

general vicinity. However, if the event is a state or county fair which meets for more than five (5) days in any year, a special license must be issued at a charge of Twenty-five Dollars ($25.00).

(5) **Sale by original packages only, for consumption off premises; exception.** A three-year permit is issued upon payment of the license tax of One Hundred Thirty Dollars ($130.00) and compliance with all other requirements. Except for the situation described in paragraph (6) of this subsection, it is unlawful for the retailer to allow any low-point beer container to be opened or broken or consumed in or on the licensed premises.

(6) **Samples produced and provided by an in-state manufacturer.** An in-state manufacturer, selling its own products for off-premises consumption, may serve visitors on the premises free samples of low-point beer produced on the premises, provided that the samples shall not exceed twelve (12) fluid ounces per customer, per visit.

(7) **A dealer who ceases to offer low-point beer.** A dealer who ceases to offer low-point beer is entitled to receive a refund of license tax, in a prorated amount to be determined by the Commission, with respect to the amount of time remaining until expiration of the current permit.

(8) **Fee increases.** Retail dealers who have obtained permits prior to July 1, 2003, shall not be subject to the increased fees until the existing permit is renewed.

[OAR Docket #05-731; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 22. BOATS AND MOTORS

[OAR Docket #05-733]

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PERMANENT final adoption
RULES:
Subchapter 3. Dealers
710:22-3-1. Boats or motors in dealer's possession; demonstration permits; contest participation [AMENDED]
Subchapter 5. Procedures for Registration
710:22-5-8. Registration fees [AMENDED]
710:22-5-9. Registration decals [AMENDED]
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68 O.S. § 203, 63 O.S. § 4004; Oklahoma Tax Commission
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ANALYSIS:
Existing Section 710:22-3-1 has been amended to conform with the provisions of House Bill 2441 which provided that vessels or motors used for participating in a contest would not be subject to the statutory restrictions for demonstration permits issued to licensed dealers. [**63:4035(A)**]

Existing Section 710:22-5-8 has been amended to conform with the provisions of House Bill 2132 which established an elective three-year registration period at a reduced rate for vessels or motors. [**63:4019**]

Existing Section 710:2-5-9 has been amended to reflect the new three-year registration option provided for by HB 2132, and to conform with the provision of House Bill 2441, which defined the term "antique boat" and authorized the Tax Commission to promulgate rules for the placement of the required registration decal in an alternate location for antique boats. [**63:4030**]
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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 3. DEALERS

710:22-3-1. Boats or motors in dealer's possession; demonstration permits; contest participation

When registration expires on a used boat or motor with Oklahoma title while in a dealers possession, the boat and motor dealer does not have to renew the registration. The dealer affixes a demonstration permit to the boat or motor when they are used for demonstrating or any other normal business of the dealer. Vessels or motors used for contest participation purposes shall not be subject to the statutory restrictions for demonstration permits issued to licensed dealers.

SUBCHAPTER 5. PROCEDURES FOR REGISTRATION

710:22-5-8. Registration fees

(a) Fees for original and renewal are based on the number of years registered and the factory delivered price (not selling price). ~~The dealer should show the correct amount on the application form.~~ A selling Oklahoma dealer is to list the manufacturer's original retail factory delivered price of the boat or outboard motor on the application documentation.

(b) A boat or outboard motor registrant will have an option at the time of registration of selecting either a one (1) or three (3) year registration period.

710:22-5-9. Registration decals

(a) Upon payment of the ~~annual~~ registration fee, ~~a~~ the applicable registration decal will be issued to each boat ~~registered~~ and ~~to each~~ outboard motor registered.

(b) ~~If, due to the size of the decal, it cannot be properly displayed on the vessel or outboard motor, the registrant may, with the consent of the Department of Public Safety Lake Patrol, cut or trim the decal, but only to the extent required for proper display. In no event is the registration decal number to be altered, defaced, or eliminated.~~ Antique boats may display the registration decal on the left portion of the windshield. In the absence of a windshield, the registration decal may be attached to the certificate of registration, such registration shall be available for inspection when the boat is operated on public waters.

(c) For the purposes of subsection (b), "**antique boat**" is defined as a boat that:

(1) Is used primarily for recreational purposes; and

(2) Was manufactured before 1968.

[OAR Docket #05-733; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 23. CHARITY GAMES

[OAR Docket #05-734]

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PERMANENT final adoption
RULES:
710:23-1-2. Definitions [AMENDED]
710:23-1-4. Distributor operations and reporting [AMENDED]
710:23-1-8. Limited exemptions [AMENDED]
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68 O.S. § 203, 3A O.S. § 422; Oklahoma Tax Commission
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ANALYSIS:
A definition of "veterans' organization" in conformity with statute has been added to Section **710:23-1-2**, in keeping with the provisions of House Bill 1889. [**3A:421**]

Section **710:23-1-4** has been amended to require documentation from distributors concerning exempt sales to "veterans' organizations". [HB 1889 §1] [**3A:422**]

Section **710:23-1-8** has been amended to add the provision that sales of charity game equipment to "veterans' organizations" are exempt from sales tax. [HB 1889 §3] [**68:1355**]
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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

710:23-1-2. Definitions

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

"ABLE" means the Alcoholic Beverage Laws Enforcement Commission.

"Act" means the Oklahoma Charity Games Act, 3A O.S. Supp. 1993, § 401 et seq.

"Commission" means the Oklahoma Tax Commission.

"Conforming bingo faces" means bingo faces with the word "Oklahoma" and outline of the state of Oklahoma printed thereon.

"Defaulting organization" means any licensed entity that has failed to pay to the distributor the tax required by the Act.

"Dual license holder" means any entity licensed as both a distributor and manufacturer under the Act.

"Exempt entity" or **"exempt organization"** means an organization specifically designated as exempt by the terms of Section 405 of the Oklahoma Charity Games Act, 3A O.S. § 401, et seq.

"Licensed distributor" means a distributor of charity game equipment as defined under the Act, licensed by the Oklahoma ABLE Commission.

"Licensed manufacturer" means a manufacturer of charity game equipment as defined under the Act, licensed by the Oklahoma ABLE Commission.

"Veterans' organization" means an organization whose members consist primarily of past or present members of the United States armed forces, where the organization is *exempt from taxation pursuant to the provisions of paragraph (4), (7), (8), (10) or (19) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq.* [**See:** 3A O.S.2001, § 421(D)]

710:23-1-4. Distributor operations and reporting

(a) **Sales of conforming bingo faces.** A licensed distributor must sell bingo faces, imprinted with the word "Oklahoma" and outline of the state of Oklahoma ("conforming bingo faces"), to licensed organizations, exempt organizations, and exempt entities. ~~All~~ Except for sales to veterans' organizations, all sales of conforming bingo faces~~, regardless of to whom the faces are sold,~~ are subject to tax. Conforming bingo faces may not be sold to federally recognized Indian tribes or nations.

(b) **Records and reports required.** The following items apply to records and reports of distributors:

(1) A distributor who sells, leases, or otherwise provides charity game equipment must record the transaction on a sales invoice.

(2) A sales invoice must be on a form approved by the Tax Commission and must contain the following information:

(A) The "ABLE" license number of the distributor;

(B) The name of the licensed organization, entity, or licensed distributor;

(C) The complete business name and address of the organization, entity, or licensed distributor;

(D) The "ABLE" license or "ABLE" exemption permit number of the organization, entity, or licensed distributor;

(E) The invoice number;

(F) The date the equipment was shipped;

(G) A full description of each item of equipment sold;

(H) The serial numbers of the bingo sets, U-Pik-Em game sets, breakopen ticket games, and selection equipment. The invoice for bingo faces must designate whether the bingo faces are conforming bingo faces;

(I) The identity of the manufacturer from which the distributor purchased the equipment;

(J) The date of the sale of the charity game equipment;

(K) The name of the person who ordered the charity game equipment;

(L) Whether the sale was an exempt sale made to a veterans' organization.

(c) **Monthly reporting.** Each distributor shall submit monthly to the Tax Commission:

(1) **Purchase invoices.** Copies of all purchase invoices from the licensed manufacturer, licensed distributor, or printer (jobber), stating the amount and price of each item obtained and in the case of invoices for bingo faces, whether they are conforming or nonconforming;

(2) **Sales invoices.** Copies of all sales invoices submitted for payment to purchasers of charity game equipment, bingo faces (conforming and nonconforming), U-Pik-Em game sets, and breakopen ticket games, regardless of whether the sale was to a licensed organization, exempt organization or entity, or person or entity excluded from the Act;

(3) **Printing invoices.** Copies of all invoices and work orders for conversion by jobbers, (i.e., the printing of the outline of the state of Oklahoma onto nonconforming paper) and for the printing of U-Pik-Em game sets. The invoice and work order must include the name of the printer, the number of bingo faces, and the series and serial numbers of the bingo faces. If the bingo faces printed are in sets, only the serial number of the top sheet must be included.

(4) **Reconciliation of inventory of charity game equipment.**

(A) The perpetual reconciliation of inventory is reported on the monthly reporting form, Schedule A, pertaining to bingo faces, and shall be detailed as to the number of conforming, nonconforming, and U-Pik-Em bingo games purchased from licensed manufacturers, licensed distributors, and printers (jobbers). It must reflect the total number of faces and U-Pik-Em games purchased and sold by the distributor.

(B) The breakopen ticket game reconciliation is reported on Schedule B on the monthly reporting form and must reflect the retail sales value of the breakopen ticket games purchased and sold by the distributor.

(C) Distributors who are also licensed as manufacturers must include in the reconciliation, the number of U-Pik-Em bingo game sets printed or purchased and transferred by the manufacturer and the number of U-Pik-Em bingo game sets printed by a jobber for the distributor.

(5) **Physical inventory required.** All licensed distributors shall be required to file a physical inventory of all paper (designated conforming and nonconforming), U-Pik-Ems, Tabs, and Equipment, the month following the ending month of the distributor's fiscal year. Such inventory shall include the number of conforming faces, nonconforming faces, and U-Pik-Ems, and for Tabs and Equipment, the total number of deals and items, as well as the total retail value.

(6) **Remittance of tax.** Remittance of tax is due on charity game equipment sold, rented or leased the previous month, less any discount lawfully retained. ~~All~~ With the exception of conforming bingo faces sold to veterans' organizations, all conforming bingo faces sold or otherwise transferred during the previous month are subject to tax. Adjustments may be made upon proper showing, as a result of destruction or breakage. [**See:** 710:23-1-6]

(7) **Remuneration.** A distributor who timely reports and remits monthly may retain the discount provided in the Act. If the tax becomes delinquent, the discount is forfeited by the distributor.

(8) **Interest and penalty.** Interest and penalty as provided in 68 O.S. §217 shall apply to all liability not paid at the time required by the Act.

(d) **Quarterly reporting.** Each distributor, on the last day of the month following the end of the quarter, shall submit a report and supporting data to the Tax Commission containing the name, address, and license or exemption number, if any, of each purchaser of charity game equipment.

(e) **Magnetic or electronic reporting.** The quarterly report may, if desired, be submitted via magnetic media (tape or diskette) or by modem, directly to the Commission. Reports submitted via the magnetic media or electronic data shall conform to the Magnetic Media Guide prepared by the Oklahoma Tax Commission.

710:23-1-8. Limited exemptions

(a) **Use of conforming bingo faces required.** If an exempt entity or exempt organization chooses to use disposable paper bingo faces in conducting charity games, only bingo faces with the word "Oklahoma" and outline of the state of Oklahoma printed thereon ("conforming bingo faces") purchased from a licensed distributor may be used and the tax levied by the Act must be paid.

(b) **Charity game equipment purchased from licensed distributors.** An exempt entity or exempt organization purchasing charity game equipment from a licensed distributor or licensed
organization shall pay the tax levied by the Act in the same manner as prescribed for licensed organizations.

(c) **Exemption if tax levied by the Act is paid.** An exempt entity or exempt organization shall be exempt from sales and use tax on any item of charity game equipment purchased by the exempt entity or organization on which tax levied by the Act has been paid.

(d) **Sales of charity game equipment to veterans' organizations.** The sale of charity game equipment to a veterans' organization is exempt from sales tax.

[OAR Docket #05-734; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #05-735]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:45-1-3. Security required [AMENDED]
Subchapter 3. Payment; Remittance; Refunds
710:45-3-1. Due dates for timely payment or remittance of taxes [AMENDED]
Subchapter 5. Required Returns and Reports
710:45-5-3. Timely filing monthly production reports [AMENDED]
Subchapter 15. Reclaimers and Reclaiming Operations
710:45-15-6. Reports and payment; due dates for reclaimers [AMENDED]
AUTHORITY:
68 O.S. § 203, Oklahoma Tax Commission
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Sections 710:45-3-1 and 710:45-5-3 have been amended to reflect the new delinquency date for payment of gross production taxes and for filing Gross Production Tax Reports, to the twenty-fifth day of the second calendar month following the month of production. [**S.B.1081**] [**68:1009(B) and 1010(C)(3)**]

Section 710:45-15-6, prescribing reporting and remitting procedures for operators of reclaiming plants, has been modified similarly, to reflect the new reporting and payment dates. [**S.B.1081**] [**68:1009(B) and 1010(C)(3)**]

Section 710:45-1-3 has been amended to conform to a new provision of law, 68 O.S. § 1010a, which requires a one-time payment due on or before November 25, 2004, estimated on a formula set by statute, and an offsetting credit against the required security bond for qualifying remitters. [**S.B.1081**] [**68:1010a**]
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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

710:45-1-3. Security required

(a) **Bond required generally.** As a condition for assignment of a gross production tax purchaser reporting number and/or as a condition for approval to remit gross production taxes, a tax remitter must post a bond in an amount equal to an estimated three months' tax liability.

(b) **Adjustment of bond in applicable cases.** At the end of one year, the tax remitter may reduce its bond to an amount equal to one month's tax liability, based upon a monthly average of the prior year's tax liability, provided that a reduction in the bond amount will be permitted only if the tax remitter has had no tax deficiencies or delinquencies in the prior year. The bond amount may be adjusted annually thereafter, depending upon fluctuations in the yearly tax liability of the tax remitter.

(c) **Adjustment of bond for estimated payment.** A tax remitter who has paid the one-time estimated gross production tax payment required by 68 O.S. § 1010a, will be permitted, upon request, to reduce the amount of surety bond required by the amount of the estimated payment.

(~~c~~d) **When bond is not required.** Taxpayers who have an estimated liability of One Thousand Dollars ($1,000.00) or less per year are not required to post a bond.
(~~d~~e) **Applicability.** This Section does not apply to bond requirements for reclaimers and transporters which are governed by separate rules in this Chapter.

SUBCHAPTER 3. PAYMENT; REMITTANCE; REFUNDS

710:45-3-1. Due dates for timely payment or remittance of taxes

(a) The Gross Production Tax is due on the first day of each calendar month, and, if the tax is not paid on or before the ~~last~~ twenty-fifth (25th) day of the second month ~~it is due~~ following production, the tax becomes delinquent.
(b) Any payment or remittance of Gross Production Tax mailed and postmarked by the United States Postal Service on or prior to the ~~last~~ twenty-fifth (25th) day of the second month following production shall be considered "paid or remitted" only if also received by the Commission on or prior to that date. [**See:** 68 O.S. §1009]
(c) If the ~~last~~ twenty-fifth (25th) day of the second month following production is a Saturday, Sunday or a holiday recognized by the Executive Department of this State, then the payment shall be considered timely if received the next official working day for the Oklahoma Tax Commission following the Saturday, Sunday or holiday.

SUBCHAPTER 5. REQUIRED RETURNS AND REPORTS

710:45-5-3. Timely filing monthly production reports

(a) The Monthly Production Reports required by law shall become delinquent if not submitted to the Oklahoma Tax Commission on or before the ~~tenth~~ twenty-fifth (25th) day of the second month immediately following the month in which the product, subject to Gross Production Tax, was produced.
(b) If the due date is a Saturday, Sunday or a holiday recognized by the Executive Department of this State, then the date shall be the next official working day for the Oklahoma Tax Commission following the Saturday, Sunday or holiday.
(c) Any report mailed in and postmarked by the United States Postal Service on or prior to the delinquency date shall be considered timely submitted. [**See:** 68 O.S. §1010; OAC 710:45-5-1]

SUBCHAPTER 15. RECLAIMERS AND RECLAIMING OPERATIONS

710:45-15-6. Reports and payment; due dates for reclaimers

The operators of reclaiming plants, including disposal facilities, shall be required to remit the Gross Production and Petroleum Excise Taxes on all oil coming into their possession except where such taxes have previously been paid or when it can be shown that such oil was not subject to tax for reason of being exempt by law or having been produced in another state. Taxes shall be due on oil purchased by a reclaimer on the first day of the month following the month of purchase. Taxes shall be due on oil recovered from water at a disposal facility the first day of the month following the month it was sold by the reclaimer who recovered it. The tax shall become delinquent if not received by the Tax Commission on or before the ~~last~~ twenty-fifth (25th) day of the second month in which it became due. Reclaimer's Monthly Gross Production Tax Report, and the Reclaimers and Transporters Monthly Reports of Oil Transported and Stored are due on the same date as the tax and shall be delinquent if not received by the ~~10th~~ twenty-fifth (25th) day of the second month following the month in which they become due. Reports shall be made on OTC Form 323R-7-81 and OTC Form 323A-7-81.

[OAR Docket #05-735; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #05-739]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Reports
Part 1. General Information
710:50-3-6. Amended returns for individuals [AMENDED]
710:50-3-8. Adjustments by the internal revenue service [AMENDED]
Part 7. Other Required Reporting
710:50-3-54. Income tax withholding for pass-through entities [AMENDED]
Subchapter 9. Refunds
710:50-9-3. Interest on refunds [AMENDED]
710:50-9-7. Refund vouchers void after 90 days [AMENDED]
710:50-9-9. Different spouse refunds [REVOKED]
710:50-9-10. Check-off program [NEW]
Subchapter 11. Intercept of Refunds
710:50-11-1. Refunds may be intercepted [REVOKED]
710:50-11-2. Notice to taxpayer [REVOKED]
710:50-11-3. Notice of protest [REVOKED]
710:50-11-4. Joint returns intercept [REVOKED]
710:50-11-5. Refunds shall be intercepted [NEW]
710:50-11-6. Tax commission shall have priority over all other agencies or district courts [NEW]
710:50-11-7. Notice to taxpayer [NEW]
710:50-11-8. Post intercept notice [NEW]
710:50-11-9. Joint returns intercept [NEW]
710:50-11-10. Nondebtor spouse protest [NEW]
710:50-11-11. Notification after final determination at hearing [NEW]
710:50-11-12. Debts owed to the internal revenue service [NEW]
Subchapter 12. Treasury Offset Program [NEW]
710:50-12-1. Purpose [NEW]
710:50-12-2. Definitions [NEW]
710:50-12-3. Address on federal tax return [NEW]
710:50-12-4. Advance notification to debtor [NEW]

710:50-12-5. Post-offset notice [NEW]
710:50-12-6. Offsets on joint returns [NEW]
710:50-12-7. Fees paid to top [NEW]
Subchapter 13. Estimated Tax
710:50-13-10. The return for the taxable year [NEW]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-48. Oklahoma source capital gain subtraction [NEW]
710:50-15-49. Deduction for ~~Oklahoma or federal government~~retirement income [AMENDED]
Part 7. Credits Against Tax
710:50-15-86. Small business capital company / oklahoma small business venture credits [AMENDED]
710:50-15-94. Volunteer firefighter credit [NEW]
710:50-15-95. Poultry litter credit [NEW]
710:50-15-96. Sales tax relief credit [NEW]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51. Adjustments to arrive at oklahoma taxable income for corporations [AMENDED]
Subchapter 19. Oklahoma Taxable Income for Partnerships
710:50-19-1. Partnership return [AMENDED]
710:50-19-3. Reporting the gain on the sale, exchange, or other disposition of property for which a section 179 expense deduction was passed through to partners or shareholders, or both [NEW]
Subchapter 21. Oklahoma Taxable Income for Subchapter "S" Corporations
710:50-21-3. Reporting the gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to shareholders [NEW]

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68 O.S. § 203, Oklahoma Tax Commission

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Superseded rules:
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-48. Deduction for capital gains [NEW]
710:50-15-49. Deduction for ~~Oklahoma or federal government~~retirement income [AMENDED]
Part 7. Credits Against Tax
710:50-15-96. Sales tax relief credit [NEW]
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Superseded rules:
Subchapter 3. Returns and Reports
Part 7. Other Required Reporting
710:50-3-54. Income tax withholding for pass-through entities [AMENDED]
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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Sections **710:50-9-9**, *"Different spouse refunds"*; **710:50-11-1***"Refunds may be intercepted"*; **710:50-11-2***"Notice to taxpayer"*; **710:50-11-3***"Notice of protest"*; and **710:50-11-4***"Joint returns intercept"* have been revoked and New Sections **710:50-11-5** through **710:50-11-12** have been adopted to replace policy based on obsolete Treasury Regulations with the procedures mandated by 68 O.S. 205.2.

New Subchapter 12, *"Treasury Offset Program"*, consisting of new Sections **710:50-12-1** through **710:50-12-7**, prescribes rules which must be followed to properly offset a federal refund to satisfy a state income tax obligation, a program in which the Commission participates with the Internal Revenue Service. [26 U.S.C. § 6402(e) & 31 C.F.R. § 285.8]

New Section **710:50-9-10**, *"Check-off program"* has been adopted to clarify policy with respect to retention and deletion of "check-off" boxes for making certain donations from taxpayer refunds on Oklahoma Income Tax Return forms.

New Section **710:50-13-10**, has been adopted to interpret the phrase, *"the return for the taxable year",* which had been at issue in an administrative proceeding, and not previously been addressed by the Oklahoma courts. [**68:2385.13**] [Commission Decision No. 2004-08-10-04 (Precedential)]

Section **710:50-19-1**, *"Partnership return"* has been amended to clarify policy regarding partnerships and which members may file a composite return.

New Section **710:50-19-3**, *"Reporting the gain on the sale, exchange, or other disposition of property, for which a section 179 expense deduction was passed through to partners"* was adopted to disseminate information as to the tax treatment and reporting of this particular transaction, to reflect a change in the way partnerships must report these gains for IRS purposes.

Similarly, new Section **710:50-21-3**, *"Reporting the gain on the sale, exchange, or other disposition of property, for which a section 179 expense deduction was passed through to shareholders"* was adopted to disseminate information as to the tax treatment and reporting of this particular transaction, to reflect a change in the way S-Corporations must report these gains for IRS purposes.

Sections **710:50-3-6**, *"Amended returns for individuals"* and **710:50-3-8**, *"Adjustments by the internal revenue service"* have been amended to update forms, to clarify terminology, and to conform to statute. [**68:2353(11)**] [**68:2375(H)(3)**]

Section **710:50-3-54**, entitled, "***Income tax withholding for pass-through entities***" was first promulgated pursuant to law enacted in the 49th Legislature, 1st Regular Session, and is being amended to reflect amendments from the 2nd Regular Session. Senate Bill 1556(1) & House Bill 2421(4)(5) [**68:2385.30**&**68:2385.31**]

Section **710:50-9-3**, *"Interest on refunds"* has been amended to conform with Laws 2003, c.472, § 5, which authorized different interests rates and time periods for returns filed electronically. [**68:217(H)**]

Section **710:50-9-7**, entitled *"Refund vouchers void after 90 days"* has been amended to conform to the provisions of Senate Bill 1121(14), which altered the time period within which an uncashed refund warrant may be reissued. [**68:2385.16**]

New Sections **710:50-15-48**, *"Oklahoma source capital gain subtraction"* [**68:2358(E)**] and **710:50-15-96**, *"Sales tax relief credit"* [**68:5011**] have been added and Section **710:50-15-49**, *"Deduction for ~~Oklahoma or federal government~~ retirement income"*[**68:2358(D)(9),(15)**] has been amended, all to reflect the provisions of House Bill 2660(14),(15), adopted in the general election of November 2, 2004 (S.Q.713).

New Section **710:50-15-86**, entitled *"Small business capital company / Oklahoma small business venture credits"* was amended pursuant to the terms of House Bill 2124, which amended the capitalization requirements for the credit. [**68:2357.61**]

New Section **710:50-15-94**, *"Volunteer firefighter credit"* has been added to implement the new credit for qualifying volunteer firefighters enacted by House Bill 2372. [**68:2358.7**]

New Section **710:50-15-95**, *"Poultry litter credit"* has been added to reflect the new credit allowed for qualifying purchases and transportation of poultry litter enacted by House Bill 2218. [**68:2357.100**]

Section **710:50-17-51**, *"Adjustments to arrive at Oklahoma taxable income for corporations"* has been amended to correct an omission error in 21 Ok Reg 2571 (at 2580) in which the final paragraph of this Section was inadvertently omitted.

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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 1. GENERAL INFORMATION

710:50-3-6. Amended returns for individuals

(a) If a resident taxpayer is required or elects to file an Individual **Amended** Oklahoma Income Tax Return, OTC Form 511X must be submitted. Items listed in (1) through (3) of this subsection, should be attached or an explanation if the item is not applicable:

(1) A copy of the Amended Federal Income Tax Return, or a copy of the Federal Form 1040X, or Federal Form 1045,

(2) Proof that Internal Revenue Service has accepted the claim, such as a copy of the statement of adjustment, any correspondence from Internal Revenue Service, or a copy of the deposit slip of the Federal refund,

(3) Supporting documents for any adjustments to Federal Adjusted Gross Income (OTC Form 511X Line 1) to support each **final** adjusted amount.

(b) Part-year residents and nonresidents must use OTC Form 511NR and indicate that the return is an amended return by marking the appropriate box,

(c) When an individual taxpayer wishes to file or is required to file amended returns for more than one year, an amended return must be completed for each year an amendment is made. No amended return may encompass more than one single year. [**See:** 68 O.S. 2368]

710:50-3-8. Adjustments by the Internal Revenue Service

(a) If any taxpayer's Federal Income Tax Return is adjusted, an Amended Oklahoma Income Tax Return must be filed within one year. All supporting documentation must be enclosed with an Oklahoma Amended Income Tax Return for the tax year involved. Upon request, the taxpayer must furnish a complete copy of the Federal Income Tax Return, including all schedules, to enable the Tax Commission to determine the correct Oklahoma tax.

(b) The Commission has two (2) years from the date the return or notice was filed to make an assessment or refund and not thereafter, unless a waiver is agreed to and signed by the Commission and the taxpayer.

(c) In the event of failure by a taxpayer to comply with the requirement set out in (a) of this Section, the statute of limitations is tolled until the Amended Oklahoma Income Tax Return ~~or notice~~ is actually furnished.

(d) When the Internal Revenue Service changes the Federal Income Tax Return by issuing its final determination, the Tax Commission shall have the authority to audit each and every item of income, deduction, credit or any other matter related to the return, where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination. [**See:** 68 O.S. § 2375]

PART 7. OTHER REQUIRED REPORTING

710:50-3-54. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from ~~each distribution~~ distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;

(E) A member of a limited liability company; or,

(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the ~~cash distribution or the Oklahoma net distributed income if determinable at the time of distribution~~ taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the ~~cash distribution or the Oklahoma distributed net income if determinable at the time of distribution~~ taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** ~~Persons, other than individuals, who are exempt from federal income tax are not subject to having income tax withheld under this Section. Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code are not subject to having income tax withheld under this Section. Also, insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax under 68 O.S. § 2359(c) are not subject to having income tax withheld under this Section.~~ The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-17-17 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

~~(4) When a distribution made by a pass-through entity is determined to be not subject to the provisions of this Section by the Commission; or,~~

(4) When a pass-through entity is making distributions subject to the withholding requirements for non-resident attorneys set out in 5 O.S.Supp.2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;

(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt~~.~~;

(6) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,

(7) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to ~~file an Oklahoma Tax Commission Form OW-9-C and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:~~ remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required

estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

~~(1) **First quarter.** For distributions made during January, February, and March, the amount withheld is due no later than April 30;~~

~~(2) **Second quarter.** For distributions made during April, May, and June, the amount withheld is due no later than July 31;~~

~~(3) **Third quarter.** For distributions made during July, August, and September, the amount withheld is due no later than October 31; and~~

~~(4) **Fourth quarter.** For distributions made during October, November, and December, the amount withheld is due no later than January 31 of the following year.~~

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of ~~the distribution~~ taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), ~~by last day of the second month after the end of its taxable year, showing the member's respective amount of income and the tax withheld~~ on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-Bs, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form OW-9-C) on or before the due date of the pass-through entity's income tax return, including extensions.

(~~2~~3) Each non-resident member must enclose a copy of ~~the~~ OTC Form 500-B to the Oklahoma income tax return as verification for this withholding. ~~Copies of Form 500-Bs, along with the Oklahoma Tax Commission Form 501, must be sent to the Oklahoma Tax Commission by the same date.~~

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

SUBCHAPTER 9. REFUNDS

710:50-9-3. Interest on refunds

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

(b) **Returns filed on or after January 1, 2004.** In the case of returns filed on or after January 1, 2004, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, thirty (30) days; and,

(2) For all other returns, One Hundred Fifty (150) days.

(c) **Definitions.** For purposes of this Section, time periods shall be determined from the date a processible return is filed or due, whichever is later. To be **"processible"**, all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return

must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [**See:** 68 O.S. § 217(H)]

(d) **Exceptions.** Alternative statutory provisions apply in the following instances:

(1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [**See:** 68 O.S. § 217(H)]

(~~b~~2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.

(3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands~~. Interest, in these cases~~, interest at 6 percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued.~~ The rate of interest will be 6 percent (6%) per annum.~~ [**See:** 68 O.S.1997, § 2373]

~~(c) Subsections (a) and (b) do not apply in~~

710:50-9-7. Refund vouchers void after 90 days

(a) Refunds issued for overpayment of income tax become void ninety (90) days after issuance. In the case of an income tax refund warrant which has not been presented for payment within the ninety (90) days, a reissue of the refund warrant may be requested from the Tax Commission. Such an income tax refund warrant may be reissued for a like amount up to ~~five (5)~~ three (3) years from the date of the issuance of the original warrant. [**See:** 68 O.S. § 2385.16]

(b) Refunds not claimed at the end of three years from the date of issuance will be turned over to the Unclaimed Property section of the State Treasurer's Office.

710:50-9-9. Different spouse refunds [REVOKED]

~~If a spouse, on a jointly filed income tax return, has a prior year liability, the amount of refund to be applied shall be the amount determined by a ratio computed by dividing the total income into the amount of earnings by the spouse whose liability is outstanding. [**See:** 26 U.S.C.A. §6013-5]~~

710:50-9-10. Check-off program

(a) **Check-off program.** The Oklahoma Income Tax Check-Off Program provides a taxpayer with the opportunity to make a financial gift to a variety of Oklahoma organizations from a tax refund due.

(b) **Termination of a check-off category.** If, on September 1, of any year, the total contributions to any one of the categories established by the Income Tax Check-Off Program do not equal or exceed Fifteen Thousand Dollars ($15,000.00) for each of the last three consecutive calendar years, the category will be removed from Oklahoma Income Tax Returns for the following and all subsequent years. Any contribution to the removed category after September 1 shall be refunded to the taxpayer. [**See:** 68 O.S. § 2368.2]

SUBCHAPTER 11. INTERCEPT OF REFUNDS

710:50-11-1. Refunds may be intercepted [REVOKED]

~~Oklahoma law authorizes the Commission to intercept the Oklahoma Income Tax refunds of individuals who have outstanding debts owed to certain state and federal agencies. The Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtors' obligations. [**See:** 68 O.S. §205.2]~~

710:50-11-2. Notice to taxpayer [REVOKED]

~~The state or federal agency to whom a debt is owed must notify the taxpayer/debtor that an income tax refund intercept has been claimed, pursuant to 68 O.S. § 205.2(A)(2).~~

710:50-11-3. Notice of protest [REVOKED]

~~(a) Notice of the right of protest shall be made to the taxpayer/debtor by the referring agency within seven (7) days of making a claim to the Commission for an income tax refund intercept.~~

~~(b) The referring agency must notify the Tax Commission of the status of a debtor's account within ninety (90) days of initial notice of refund intercept by the Tax Commission, whether or not any protest proceeding shall have been completed. Intercepts not updated due to the referring agency's failure to provide status reports will be purged from the Warrant Intercept System and funds will be released to the taxpayer.~~

710:50-11-4. Joint returns intercept [REVOKED]

~~(a) The Oklahoma Tax Commission will intercept a refund from a joint Income Tax Return to offset a past due obligation if either spouse is legally responsible for the past due obligation.~~

~~(b) If a complaint or question arises concerning joint refund cases prior to interception and disbursement of funds to the referring agency, the referring agency will be responsible for handling of such complaint or question.~~

~~(c) The nondebtor spouse has a responsibility to protest to the referring agency within thirty (30) days of his/her receipt of notice of intercept and his/her failure to request a hearing, in writing, shall be considered a default. Any right to a portion of the intercepted tax refund shall be waived. If a complaint or question arises after final disbursement of funds to a referring agency involving a nondebtor spouse, the referring agency shall be required to affirm the validity of its original claim and furnish proof to the Commission that notice requirements were met.~~

710:50-11-5. Refunds shall be intercepted

Prior to payment of any refund, the Tax Commission shall deduct from any state refund due to a taxpayer the amount of delinquent state tax, penalty, and interest thereon, which the taxpayer owes pursuant to any state tax law. [**See:** 68 O.S. § 205.2(E)]

710:50-11-6. Tax Commission shall have priority over all other agencies or district courts

(a) The Tax Commission shall have first priority over all other agencies or district courts when the Tax Commission is collecting a debt or final judgment. Priority in multiple claims by other agencies or district courts pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the agencies and district courts required by (b) of this Section. **[See: 68 O.S. § 205.2(F)]**

(b) A state agency or a district court seeking to collect a debt or final judgment of at least Fifty Dollars ($50.00) from an individual who has filed a state income tax return may file a claim with the Tax Commission, requesting that the amount owed to the agency or district court be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security Number of the debtor. **[See: 68 O.S. § 205.2(A)]**

(c) Upon receiving a claim from a state agency or a district court, the Tax Commission shall notify the agency or district court whether there are funds available to pay the claims. Provided, the Tax Commission need not report available funds of less than Fifty Dollars ($50.00).

(d) The Tax Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtor's obligations.

710:50-11-7. Notice to taxpayer

(a) The referring agency to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The state agency or a district court shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The Tax Commission, state agency, or the district court shall send notice to the judgment debtor by first class mail at the last-known address of the judgment debtor as shown by the records of the Tax Commission when seeking to collect a final judgment. The notice shall state:

(1) That a claim has been filed;

(2) The basis for the claim;

(3) That such state agency or district court has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt or final judgment in full or part;

(4) That the debtor has the right to contest the claim by sending a written request to the Tax Commission, state agency, or the district court for a hearing to protest the claim and if the debtor fails to apply for a hearing within sixty (60) days after the receipt of the notice, the debtor shall be deemed to have waived the opportunity to contest the claim; and,

(5) That a collection expense of five percent (5%) of the gross proceeds owed to the state agency or district court shall be charged to the debtor and withheld from the refund upon final determination of the debt or final judgment at the hearing or upon failure of the debtor to request a hearing.

(c) If the taxpayer settles the outstanding debt or final judgment with the agency or district court before the sixty (60) days expire, the agency or the district court shall notify the Tax Commission in writing or by electronic media that the claim has been released. [**See:** 68 O.S. § 205.2(A)(2)]

710:50-11-8. Post intercept notice

The referring agency must notify the Tax Commission of the status of a debtor's account within ninety (90) days of the initial notice of refund intercept by the Tax Commission, whether or not any protest proceeding has been completed. Intercepts not updated due to the referring agency's failure to provide status reports will be purged from the Warrant Intercept System and funds will be released to the taxpayer.

710:50-11-9. Joint returns intercept

(a) The Tax Commission will intercept a refund from a Joint Income Tax Return to offset a past due obligation if either spouse is legally responsible for the past due obligation.

(b) In the case of a joint return, the notice shall state:

(1) The name of the taxpayer named in the return, against whom no debt or final judgment is claimed;

(2) The fact that a debt or final judgment is not claimed against the taxpayer;

(3) The fact that the taxpayer is entitled to receive a refund if it is due, regardless of the debt or final judgment asserted against debtor; and,

(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the Tax Commission or referring agency named in the notice within sixty (60) days after the date of the mailing of the notice. Tax Commission Form 505 can only be used to claim the refund when the Tax Commission is the agency claiming that a debt is owed.

(c) If the taxpayer against whom no debt or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. [**See:** 68 O.S. § 205.2(A)(3)]

710:50-11-10. Nondebtor spouse protest

If the district court or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt or final judgment is claimed requesting a hearing, the agency or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt or final judgment asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt or final judgment. Appeals from actions taken at the hearing

shall be in accordance with the provisions of the Administrative Procedures Act. **[See: 68 O.S. § 205.2(B)]**

710:50-11-11. Notification after final determination at hearing

(a) Upon final determination at a hearing, as provided for in 710:50-11-10, of the amount of the debt or final judgment, or upon failure of the debtor or taxpayer against whom no debt or final judgment is claimed to request such a hearing, the district court or the agency shall submit in a manner prescribed by the Tax Commission, notification of the action taken on the claim and a request that the amount owed, including the collection expense, be deducted from the tax refund due to the debtor and transferred to the district court or the agency. However, if the tax refund due is inadequate to pay the collection expense and debt or final judgment, the balance due the state agency or the district court shall be a continuing debt or final judgment until paid in full.

(b) Upon receipt of notification provided in this Section, the Tax Commission shall:

(1) Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency or district court and distribute it by retaining two percent (2%) and transferring three percent to the district court or the state agency as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Tax Commission Fund;

(2) Transfer the amount of debt or final judgment or so much thereof as is available to the state agency or the district court;

(3) Notify the debtor in writing as to how the refund was applied; and,

(4) Refund to the debtor any balance remaining after deducting the collection expense and debt or final judgment. [**See:** 68 O.S. § 205.2(C) and (D)]

710:50-11-12. Debts owed to the Internal Revenue Service

The Tax Commission may employ the procedures provided by Section 205.2 of Title 68 in order to collect a debt owed to the Internal Revenue Service. [**See:** 68 O.S. § 205.2(I)]

SUBCHAPTER 12. TREASURY OFFSET PROGRAM

710:50-12-1. Purpose

The provisions in this Subchapter have been promulgated to implement and administer, in conjunction with the Internal Revenue Service, the Treasury Offset Program, "TOP" authorized by 26 U.S.C. § 6402(e) and 31 C.F.R. § 285.8.

710:50-12-2. Definitions

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

"Debt" means past-due, legally enforceable State income tax obligation unless other indicated.

"Debtor" means a person who owes a state income tax obligation.

"IRS" means the Internal Revenue Service, a bureau of the U.S. Department of the Treasury.

"Past-due, legally enforceable State income tax obligation" means a debt which resulted from:

(A) A judgment rendered by a court of competent jurisdiction, which has determined an amount of State income tax to be due;

(B) A determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review; or,

(C) A State income tax assessment (including a self-assessment) which has become final in accordance with State law but not collected, and which has not been delinquent for more than 10 years.

"Tax refund offset" means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s).

"Tax refund payment" means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits for any liabilities for any Federal tax on the part of the person who made the overpayment.

710:50-12-3. Address on federal tax return

TOP will only offset a tax refund payment if the address shown on the Federal tax return for the taxable year of the overpayment is an address within the State seeking the offset.

710:50-12-4. Advance notification to debtor

(a) The State is required to provide a written notification to the debtor by certified mail, return receipt requested, informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice must also give the debtor at least 60 days to present evidence, in accordance with procedures established by the State, that all or part of the debt is not past-due or not legally enforceable.

(b) The State must, in accordance with procedures established by the State, consider any evidence presented by a debtor in response to the notice described in (a) of this Section and determine whether an amount of such debt is past-due and legally enforceable.

(c) Prior to submitting a debt to TOP for collection by tax refund offset, the State must make reasonable efforts to collect the debt. Reasonable efforts include making written demand on the debtor for payment and complying with any other prerequisites to offset established by the State.

710:50-12-5. Post-offset notice

(a) When an offset occurs, TOP shall notify the debtor in writing of the following:

(1) The amount and date of the offset and that the purpose of the offset was to satisfy a past-due, legally enforceable State income tax obligation;

(2) The State to which this amount has been paid or credited; and,

(3) A contact point within the State that will handle concerns or questions regarding the offset.

(b) The notice shall also advise any non-debtor spouse who may have filed a joint return with the debtor of the steps which the non-debtor spouse may take in order to secure his or her proper share of the tax refund.

710:50-12-6. Offsets on joint returns

If the person filing a joint return with a debtor who owes a past-due, legally enforceable State income tax obligation takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that TOP deduct that amount from future amounts payable to the State or that TOP otherwise obtain the funds back from the State. TOP, or the appropriate State, will adjust their debtor records accordingly.

710:50-12-7. Fees paid to TOP

The State will pay a fee to TOP to cover the full cost of offsets taken. The fee will be established annually in such amount as TOP determines to be sufficient to reimburse TOP for the full cost of the offset procedure. TOP will deduct the fees from amount collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering TOP. The fee for 2004 is 1% of the offset.

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-10. The return for the taxable year

If an individual taxpayer files an amended return after filing the original return and before the due date for filing the original return, including any extensions, the amended return constitutes **"the return for the taxable year"** pursuant to 68 O.S. § 2385.13. The amount shown on the amended return is used to determine the amount of underpayment. If the amended return is filed after the due date it is not "the return for the taxable year" for purposes of Section 2385.13. In that case, the tax shown on the amended return will not be used to compute the amount of underpayment.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-48. Oklahoma source capital gain deduction

(a) **General provisions.** For tax years beginning on or after January 1, 2005, individual taxpayers can subtract from the Oklahoma adjusted gross income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. The gain must be realized on or after January 1, 2005, in order to be eligible for the Oklahoma exclusion.

(b) **Qualifying gains receiving capital treatment.** As used in this Section, **"qualifying gains receiving capital treatment"** means the amount of net capital gains, as defined under Internal Revenue Code Section 1222(11), [IRC § 1222(11)]. The gain must be included in the federal income tax return of the individual taxpayer.

(1) **Sale of real or tangible personal property.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of real or tangible personal property located within Oklahoma. Individual taxpayers must have held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(2) **Sale of stock or ownership interest.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of stock or ownership interest in an Oklahoma company, limited liability company, or partnership and the stock or ownership interest must have been held by the individual for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(3) **Sale of real or tangible personal property by pass-through entities.** Net capital gains earned by an individual member, partner, or shareholder of a pass-through entity as a result of the sale of real or tangible personal property located within Oklahoma, and included in the individual's federal taxable income is excludable, provided that the individual has been a member of the pass-through entity for an uninterrupted period of five (5) years and that the pass-through entity has held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(4) **Sale of stock or ownership interests by pass-through entities.** Net capital gains earned by an individual member, partner, or shareholder of a pass-through entity as a result of the sale of stock or an ownership interest in an Oklahoma company, limited liability company, or partnership, is excludable, provided that the individual has been a member of the pass-through entity for an uninterrupted period of three (3) years and that the pass-through entity has held the asset for not less than (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(5) **Installment sales.** Qualifying gains included in an individual taxpayer's federal taxable income for years after December 31, 2004, which are derived from installment sales are eligible for exclusion, provided the appropriate holding periods are met.

(c) **"Oklahoma company", "limited liability company", "partnership".** An Oklahoma company, limited liability company, or partnership is one whose primary headquarters has been located in Oklahoma for at least three (3) years prior to the capital gain transaction. The Oklahoma company, limited liability company, or partnership must meet the three (3) year rule for an uninterrupted period.

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

(a) **General provisions applicable to Oklahoma or federal government retirement income.** 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. Effective for tax years beginning on or after January 1, 2005, this deduction increases to Seven Thousand Five Hundred Dollars ($7,500.00). 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) or for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred ($7,500.00), per individual.

(b) **Qualifying Oklahoma or federal government 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; state and federal government retirees.** 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.

(d) **General provisions for other retirement income.** Each individual taxpayer aged sixty-five (65) and over may deduct up to Five Thousand Five Hundred ($5,500.00) of other retirement benefits received and included in Federal Adjusted Gross Income through tax year 2004. Effective for tax years beginning on or after January 1, 2005, this deduction increases to Seven Thousand Five Hundred Dollars ($7,500.00) and the taxpayer is no longer required to be sixty-five (65) years of age. This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all retirement benefit plans may not exceed Five Thousand Five Hundred Dollars ($5,500.00) or, for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred ($7,500.00), per individual.

(1) **Income eligibility levels for tax years through 2004.** In order to qualify for this exclusion, Oklahoma Adjusted Gross Income cannot exceed Twenty Five Thousand Dollars ($25,000.00) for individuals using the filing status of "single, married filing separately, or head of household". For individuals using "married filing jointly or for qualifying widows" filing status, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars ($50,000.00) in order to qualify for the exclusion.

(2) **Income eligibility levels for tax year 2005 and subsequent years.** Effective for tax years beginning on or after January 1, 2005, Oklahoma Adjusted Gross Income cannot exceed Thirty Seven Thousand Five Hundred Dollars ($37,500.00) for individuals using the filing status of "single, married filing separately, or head of household". For individuals using "married filing jointly or for qualifying widows" filing status, Oklahoma Adjusted Gross Income cannot exceed Seventy Five Thousand Dollars ($75,000.00) in order to qualify for the exclusion.

(e) **"Qualifying other retirement income" defined.** For purposes of this Section "other retirement income" must be received from the following and satisfy the requirements of the Internal Revenue Code (IRC):

(1) An employee pension benefit plan under IRC Section 401;

(2) An eligible deferred compensation plan under IRC Section 457;

(3) An individual retirement account, annuity, or trust or simplified employee pension under IRC Section 408;

(4) An employee annuity under IRC Section 86; or,

(5) Lump-sum distributions from a retirement plan under IRC Section 402(e).

(f) **Disability income; private sector retirees.** Disability retirement benefits received by an individual shall qualify for the retirement income deduction, without regard to the recipient's age.

PART 7. CREDITS AGAINST TAX

710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

(a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized

to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars ($1,000,000.00). [**See:** 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.

(1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, ~~2005,~~ 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. § 2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [**See:** 36 O.S. §§ 624, 628]

(2) **General provisions.** The credit shall be equal to twenty percent (20%) of the cash amount invested in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of funds so invested.

(3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ten (10) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Small Business Capital Company is used by an Oklahoma Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company. Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the cash amount invested in an Oklahoma Small Business Venture and may only be claimed in the tax year the investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ten (10) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder or a partner of the qualified Small Business Capital Company that has invested funds in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The investment must be made under the same terms and conditions as the investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of Two Hundred percent (200%) of the taxpayer investment in the qualified Small Business Capital Company or Two Hundred percent (200%) of the investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

710:50-15-94. Volunteer firefighter credit

(a) **General provisions.** An income tax credit of two hundred dollars ($200.00) is available for a volunteer firefighter

who has completed at least twelve (12) hours toward the Volunteer Firefighter Practices program offered by Oklahoma State University Fire Service Training. After the initial year, an additional two hundred dollar ($200.00) income tax credit is allowed each year the volunteer firefighter has completed an additional six (6) hours of Fire Service Training Volunteer Firefighter Practices program until such program or its equivalent is completed.

(b) **Advanced training credit.** An income tax credit of four hundred dollars ($400.00) each year is available for a volunteer firefighter who, after completing at least thirty (30) hours of instruction, and having completed the Volunteer Firefighter Practices program:

(1) Attends and receives certification for annual chemical, biological, radiological, and nuclear (CBRN) response training; and weapons of mass destruction (WMD) training of at least one (1) hour per subject;

(2) Completes at least six (6) hours of continuing education each year until the firefighter completes certification as a Firefighter I or its equivalent;

(3) Provides documentation from the fire chief of the applicable department that the firefighter has participated in all annual training as required by federal and state authorities; and,

(4) Provides documentation from the fire chief of the applicable department that the volunteer firefighter has met the requirements under the fire department's constitution and bylaws and is a member in good standing of the department together with a record of the total number of years of service in good standing with such department.

710:50-15-95. Poultry litter credit

(a) **General provisions.** Effective for tax year beginning on or after January 1, 2005, an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars ($5.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.

(b) **Qualification.** In order to qualify for the credit the poultry litter must:

(1) Be purchased from a registered, Oklahoma-based poultry operation located within an environmentally sensitive and nutrient-limited watershed;

(2) Be used or spread in a watershed that is not environmentally sensitive and nutrient-limited; and,

(3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.

(c) **Limitation.** The sum total of all such credits claimed cannot exceed Three Hundred Seventy-five Thousand Dollars ($375,000.00) annually, for all claimers of the credit.

710:50-15-96. Sales tax relief credit

(a) **General provisions.** Eligible individual taxpayers may claim an income tax credit for "Sales Tax Relief" pursuant to 68 O.S. § 5011. The credit is forty dollars ($40.00) multiplied by the number of allowable personal exemptions the taxpayer is entitled to claim under the Oklahoma Income Tax Act.

(b) **Eligible taxpayers.** For purposes of this Section, **"Eligible Taxpayer"** means an individual who is a resident of, and domiciled in Oklahoma, for the entire calendar year.

(c) **Gross Household Income.** For purposes of this Section **"Gross Household Income"** is the gross income of every type received by all persons occupying the same household. It includes, but is not limited to, pensions, annuities, federal social security benefits, unemployment payments, veterans disability compensation, loss-of-time insurance payments, capital gains, and any other type of income. It is not relevant whether or not the income is taxable for state or federal income tax purposes. **"Gross Household Income"** does not include gifts, or income that is considered deferred.

(d) **Eligibility for tax year 2004.** To be eligible to claim this credit, the following Gross Household Income limits apply for tax year 2004:

(1) For those taxpayers that can claim no allowable personal exemption other than themselves or their spouse, Gross Household Income cannot exceed Fifteen Thousand Dollars ($15,000.00).

(2) For those taxpayers who can claim a personal exemption other than themselves or their spouse; who are at least 65 years of age; or, who have a physical disability that is a substantial handicap to employment, Gross Household Income cannot exceed Thirty Thousand Dollars ($30,000.00).

(e) **Eligibility for tax year 2005 and following years.** To be eligible to claim this credit, the following Gross Household Income limits apply for tax year 2005 and following years:

(1) For those taxpayers that can claim no allowable personal exemption other than themselves or their spouse, Gross Household Income cannot exceed Twenty Thousand Dollars ($20,000.00).

(2) For those taxpayers who can claim a personal exemption other than themselves or their spouse; who are at least 65 years of age; or, who have a physical disability that is a substantial handicap to employment, Gross Household Income cannot exceed Fifty Thousand Dollars ($50,000.00).

(f) **Filing Requirements.** Procedures for claiming the "Sales Tax Relief" credit are:

(1) If the claim for sales tax relief is taken as a direct credit against the income taxes owed by the taxpayer, the claim must be filed by April 15 as part of the regular income tax return, using Oklahoma Tax Commission Form 538S (OTC Form 538S). Extensions of time to file an Oklahoma income tax return will **not** extend the time to file for the Sales Tax Relief Credit.

(2) If the claim for sales tax relief is not taken as a direct credit against income taxes owed by the taxpayer, the claim must be filed by June 30, using Form 538S as a stand-alone refund claim.

(g) **Exceptions and exclusions.** The exceptions and exclusions set out in this subsection apply to the "Sales Tax Relief" credit.

(1) Persons who have received temporary assistance for needy families (TANF) for any month during the tax year are not eligible for the sales tax refund under this Section, but shall receive sales tax relief as a part of their monthly TANF benefit. [**See:** 68 O.S. § 5013(B)]

(2) The Oklahoma Department of Human Services will issue the sales tax refund to persons who have continuously received aid to the aged, blind, disabled or Medicaid payments for nursing home care for the tax year. [**See:** 68 O.S. § 5013(C),(D)]

(3) A person convicted of a felony shall not be permitted to file a claim for sales tax relief for any year for which that person is an inmate in the custody of the Department of Corrections for any part of that year. [**See:** 68 O.S. § 5011(E)]

(4) Alien individuals living in Oklahoma under a temporary or restricted status do not qualify for the sales tax relief credit. [**See:** 8 U.S. § 1101(a)(15)(B) and § 1101(a)(15)(F)(i)]

(5) If a taxpayer or spouse died during the tax year, the sales tax credit cannot be claimed for the deceased. However, if the death occurred after the close of the tax year, but before the claim for sales relief was filed, the sales tax credit or refund for the deceased will be issued to the deceased's estate. [**See:** 68 O.S. § 5011]

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax.

The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [**See:** 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U. S. obligations.** Interest income from U.S. obligations are excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2006, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [**See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-1. Partnership return

(a) **General provisions.** The Oklahoma distributive share of partnership income shall be the same portion of that reported for Federal Income Tax purposes. OTC Form 514 is used to report income. [**See:** 68 O.S. §§ 2358, 2362, 2363]

(1) **Oklahoma source income or loss.** When a partnership has source income or loss then that partnership must file a return showing the income or loss applicable to Oklahoma. The partnership shall also furnish a detailed schedule stating the amount of income distributable to each partner from Oklahoma sources.

(2) **Duty to file and report; determination of shares.** All resident partners must file individual income tax returns with Oklahoma if they are required to file individual Federal Income Tax Returns. All nonresident partners that have gross income of $1,000.00 must file an Oklahoma Return even though their net may actually be a loss. The partnership income for Oklahoma may be apportioned using the three factor formula unless its operations are from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property; then the income or loss shall be allocated in accordance with the situs of such property. The partner's distributive share of Oklahoma income or loss shall be the same proportion to the partner's distributive share of income or loss shown on the Federal Partnership Return.

(3) **No credit for income taxes paid other jurisdictions.** Neither residents nor nonresidents are allowed a credit for income taxes paid to other jurisdictions on partnership income.

(4) **Composite returns.** Oklahoma will allow partnerships to file composite returns for nonresident partners as described in this paragraph. Any individual nonresident partner ~~that is not an S-Corporation or a partnership, nor electing to be treated as such,~~ may be included in the composite return so long as the partner has no income from an Oklahoma source other than the partnership. Partners that are S-Corporations (or elect to be so treated) and partnerships, trusts, and C-Corporations generally may not be included in the composite return. However, partners that are ineligible to be included in the composite return as outlined herein *may* be included in the composite return upon approval from the Oklahoma Tax Commission Audit Division.

(A) **Individual partners and trust partners.** Compute each nonresident individual or trust partner's share of Oklahoma distributive income and income tax as follows:

(i) Calculate the Oklahoma distributive share of each nonresident individual and trust partner's income as if all of the partnership income was earned in Oklahoma.

(ii) Deduct a standard deduction for each individual partner, to determine the taxable income

for the partner. The standard deduction is fifteen percent (15%) of the partner's share of Oklahoma distributive share of income determined in (i) of this subparagraph, not to exceed Two Thousand Dollars ($2,000.00). When a partner's federal income tax filing status is known, the maximum standard deduction cannot exceed One Thousand Dollars ($1,000.00) for any partner using "married, filing separately" filing status.

(I) In determining taxable income of partners filing a composite return, no deductions for personal exemptions, federal income tax paid, or dependents is permitted.

(II) For trust partners, taxable income is each partner's share of the Oklahoma distributive income in (i) of this subparagraph.

(iii) Using the Oklahoma individual income tax rates and the partner's federal income tax filing status, compute a **base tax** for each partner, based on the taxable income from (ii) of this subparagraph. If the partner's federal filing status is not known, use the individual tax rates for single taxpayers.

(iv) Calculate the **actual** Oklahoma distributive share of income of each partner.

(v) The **base tax** determined from (iii) of this subparagraph is to be prorated to determine the Oklahoma income tax of each partner. Divide the each partners **actual** Oklahoma distributive share as determined in (iv) of this subparagraph, by each partner's distributive income from all sources as determined by (i) of this subparagraph. Multiply this percentage times the **base tax** to calculate the actual Oklahoma income tax of each partner. Nothing in this section shall be construed to allow for more than one hundred percent (100%) of a nonresident partner's income to be taxed.

(B) **Corporate partners.** Compute each nonresident corporate partner's share of Oklahoma distributive income, using the partner's share of Oklahoma distributive income and the Oklahoma corporate income tax rates, to compute each partner's Oklahoma tax.

(C) **Form.** The income and tax of all partners included in the composite return must be combined on Oklahoma Tax Commission Form 514.

(D) **Schedule to be provided.** Oklahoma Tax Commission Form 514 PT must be enclosed with the Form 514 to show the computation of each nonresident partner's Oklahoma distributive income and Oklahoma tax. The schedule of nonresident partner's information may be provided on magnetic media, electronically, or in another format which meets Tax Commission guidelines.

(b) **When electronic filing is required.** For tax years beginning on or after December 31, 2004, partnerships with more than one hundred (100) partners are required to electronically file their Schedule K-1's with the Oklahoma Tax Commission. The format for filing electronically will be in either a spreadsheet format, such as Lotus 1-2-3 or Excel); or a database format, such as DBF or Access. A partnership is deemed to have "**more than one hundred (100) partners**" if, over the course of the partnership's tax year, the partnership had more than one hundred (100) partners at any time.

(c) **When electronic filing is not permitted.** Partnerships filing the following types of returns are not required to file Schedule K-1's electronically:

(1) A non-calendar year return;

(2) Returns with a non-U.S. address; or,

(3) Amended returns.

(d) **Waiver of electronic filing requirement for hardship.** Partnerships may also obtain a waiver from the electronic filing requirement if the partnership demonstrates that a hardship would result if it were required to file electronically.

710:50-19-3. Reporting the gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to partners

(a) The gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to partners is reported as Supplemental Information on the Federal K-1. For Oklahoma purposes, report such gain on OTC Form 514. Additional information is also required, as follows:

(1) A description of the property;

(2) The date the property was acquired;

(3) The date the property was sold;

(4) The gross sales price;

(5) The cost or other basis, plus expense of sale, including the partnership's basis reduction in the property due to the Section 179 expense deduction;

(6) The depreciation allowed or allowable, excluding the Section 179 expense deduction; and,

(7) The amount of Section 179 expense deduction, if any, passed through to each partner for the property, and the partnership's tax year(s) in which the amount was passed through.

(b) If the software used to prepare the return has already been programmed to report the gain on another line of Income, Part 2 or Part 3, of OTC Form 514, this method is also acceptable, but all information set out in subsection (a) must be provided.

SUBCHAPTER 21. OKLAHOMA TAXABLE INCOME FOR SUBCHAPTER "S" CORPORATIONS

710:50-21-3. Reporting the gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to shareholders

(a) The gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was

passed through to shareholders is reported as Supplemental Information on the Federal K-1. For Oklahoma purposes, report such gain on OTC Form 512S. Additional information is also required, as follows:

(1) A description of the property;

(2) The date the property was acquired;

(3) The date the property was sold;

(4) The gross sales price;

(5) The cost or other basis, plus expense of sale, including the partnership's basis reduction in the property due to the Section 179 expense deduction;

(6) The depreciation allowed or allowable, excluding the Section 179 expense deduction; and,

(7) The amount of Section 179 expense deduction, if any, passed through to each shareholder for the property, and the S-Corporation's tax year(s) in which the amount was passed through.

(b) If the software used to prepare the return has already been programmed to report the gain on another line of Income, Part 2 or Part 3, of OTC Form 512S, this method is also acceptable, but all information set out in subsection (a) must be provided.

[OAR Docket #05-739; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 55. MOTOR FUEL

[OAR Docket #05-737]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
701:55-1-2. Definitions [NEW]
Subchapter 4. Motor Fuel Tax
Part 3. Exemptions and Refunds
710:55-4-114. Procedure for perfecting and claiming exemption for sales to certain exempt entities [AMENDED]
710:55-4-119. Diesel fuel used in the fuel supply tank of a motor vehicle used to operate attached equipment, in vehicles while parked off the highways, or in trucks used for transporting certain wastes ~~and used to operate attached equipment or diesel fuel consumed by a vehicle while parked off the highways~~ [AMENDED]
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Section **710:55-4-114** has been amended to reflect the exemption for the Oklahoma Space Development Authority and spaceport users enacted by Laws 1999, c. 164, §§ (38),(39). [**68:500.10(17) and 68:500.13**]

Section **710:55-4-119** has been amended to reflect the exemption for certain garbage/refuse trucks enacted by Laws 2004, c. 37, § (1). [**68:500.14(2)**]
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

710:55-1-2. Definitions

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

"Farm tractor", for purposes of this Chapter, *means all tractor-type, motorized farm implements and equipment, but does not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed under the Oklahoma Vehicle License and Registration Act.* [**See:** 68 O.S. § 500.4(C)]

SUBCHAPTER 4. MOTOR FUEL TAX

PART 3. EXEMPTIONS AND REFUNDS

710:55-4-114. Procedure for perfecting and claiming exemption for sales to certain exempt entities

(a) **Exempt entities.** An exemption may be claimed for motor fuel:

(1) Sold to the United States or any agency or instrumentality thereof;

(2) Used solely and exclusively in district-owned public school vehicles or FFA and 4-H Club trucks for the purpose of legally transporting public school children;

(3) Purchased by any school district for use exclusively in school buses leased or hired for the purpose of legally

transporting public school children, or in the operation of vehicles used in driver training;

(4) Used solely and exclusively as fuel to propel motor vehicles on the public roads and highways of this state, when leased or owned and being operated for the sole benefit of a county, city, town, a volunteer fire department with a state certification and rating, rural electric cooperatives, rural water and sewer districts, rural ambulance service districts, or federally recognized Indian tribes; or

(5) Used by the Oklahoma Space Industry Development Authority or any spaceport user, as defined in 68 O.S. § 500.10(17).

(b) **Perfection by ultimate vendor.** The exemption for sales of motor fuel for use by the exempt entities described in subsection (a) shall be perfected by the ultimate vendor, by obtaining an exemption certificate signed by the purchasing entity. Upon obtaining the certificate, the ultimate vendor shall complete the sale to the purchasing entity without requiring payment of the motor fuel tax. Upon completion of the sale, the ultimate vendor shall execute an ultimate vendor certificate (on forms provided by the Commission) to its supplier. The ultimate vendor certificate shall include the identity of the purchasing entity.

(c) **Supplier to claim credit.** The supplier shall be eligible to claim a credit against the tax liability on the ensuing monthly report of the supplier after having made reasonable commercial inquiry into the accuracy of the information in the certificate. For purposes of this Section, "**reasonable commercial inquiry**" means that the supplier shall verify:

(1) That the ultimate vendor certificate is completed in its entirety, including the identity of the purchasing entity; and

(2) That the purchasing entity is exempt from the payment of motor fuel tax pursuant to paragraphs 5, 6, ~~or~~ 7, or 17 of Section 500.10 of Title 68 of the Oklahoma Statutes.

710:55-4-119. Diesel fuel used in the fuel supply tank of a motor vehicle used to operate attached equipment, in vehicles while parked off the highways, or in trucks used for transporting certain wastes ~~and used to operate attached equipment or diesel fuel consumed by a vehicle while parked off the highways~~

(a) The exemption for the portion of diesel fuel which is placed in the fuel supply tank of a motor vehicle and is used to operate equipment attached to the motor vehicle or consumed by the vehicle while the vehicle is parked off the highways of this state shall be perfected by a refund claim filed by the consumer. Such refund claims must be received by the Commission within three (3) years following the last day of the calendar month in which the tax was paid. The formulas set out by (1) through (11) of this Section may be used to compute the amount of the refund to be claimed for diesel fuel used in this manner:

(1) For gasoline or fuel oil, use 1.5 gallons per 10,000 gallons pumped;

(2) For bulk cement, use 3 gallons per hour;

(3) For calcium crystals, use 4 gallons per hour;

(4) For concrete, use 1.5 gallons per 5 cubic yards;

(5) For reefers, use .75 gallons per hour;

(6) For grain (dairy pellets), use .10 gallons per ton;

(7) For grain (mash), use .225 gallon per ton;

(8) For pulp, use .50 gallons per cord, or 2 cords per gallon, or 4.75 gallons per hour;

(9) For tree-length pulp, use .0500 gallons per ton, or 20 tons per gallon, or 3.50 gallons per hour;

(10) Use accurate mileage or hubometer records to establish miles-per-gallon versus gallons purchased;

(11) For "idle time", use system documentation of on-board computers, if available, or in the absence of documentation, .05% ($\frac{1}{2}$ of one percent) will be allowed.

(b) The exemption for fuel used to operate trucks designed, equipped, and used exclusively for garbage, refuse, or solid waste disposal shall be thirty-five percent (35%) of the tax paid on such fuel. However, the taxpayer may claim a greater amount under this subsection if evidence satisfactory to the Tax Commission can be shown to establish an allocation of use for a tax exempt purpose in an amount greater than thirty-five percent (35%).

[OAR Docket #05-737; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #05-729]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
710:60-1-3. Confidentiality of motor vehicle information [AMENDED]
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-11. Determining number of years registered [AMENDED]
710:60-3-17. Liability insurance [AMENDED]
710:60-3-20. Display of vehicle license plates [AMENDED]
710:60-3-21. Lost, stolen or mutilated tags and decals [AMENDED]
710:60-3-22. Charitable organization vehicle registration [AMENDED]
Part 5. Dealers
710:60-3-54. Used vehicle dealer's registration policy [AMENDED]
Part 9. Commercial Vehicles
710:60-3-92. Additional display requirements [AMENDED]
710:60-3-98. Prorated vehicles [REVOKED]
Part 11. Other Vehicles
710:60-3-114. Fractionation tanks (frac tanks) not eligible for registration [AMENDED]
Part 13. Manufactured Homes
710:60-3-133. Cancellation of manufactured home title [AMENDED]
Part 15. Special License Plates
710:60-3-150. Special license plates, general provisions [AMENDED]
710:60-3-151. Personalized license plates [AMENDED]
710:60-3-152. Motorcycle personalized license plates [AMENDED]
710:60-3-160. Antique or classic vehicles [AMENDED]
710:60-3-162. Disabled American Veteran (DAV) plates and rate [AMENDED]
710:60-3-168. Indian tribal license plates [AMENDED]
710:60-3-169. Physically disabled registration rate [AMENDED]
710:60-3-170. Physically disabled persons [AMENDED]
Part 17. Special Permits
710:60-3-202. Special mobilized machinery [AMENDED]

Subchapter 5. Motor Vehicle Titles
Part 1. General Provisions
710:60-5-1. Certificate of title required [AMENDED]
710:60-5-4. ~~Title in more than one person~~ Multiple owners [AMENDED]
710:60-5-7. Vehicle title records research [NEW]
Part 5. Certificates of Title
710:60-5-60. Vehicles purchased by foreign buyers pursuant to the Automotive Dismantlers and Part Recycler Act [NEW]
Part 11. Liens
710:60-5-111. Perfecting liens [AMENDED]
710:60-5-113. Lienholder notification [AMENDED]
710:60-5-115. Recording liens on certificates of title [AMENDED]
710:60-5-116. Mechanics' liens under Title 42 of the Oklahoma Statutes [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-4. Excise tax on heavy-weight trucks and commercial trailers [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 11. Agency Operation
710:60-9-116. Motor license agent training and continuing education [AMENDED]
710:60-9-120. Summary of operational requirements [AMENDED]
Part 13. Special Provisions for Application, Qualification, Appointment, and Agency Operation Applicable to Certain Motor License Agents and Agencies
710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours [AMENDED]

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47 O.S. §1113(A)(2) and 1149; 68 O.S. §§ 203 and 2110; Oklahoma Tax Commission

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Failure of the Legislature to disapprove the rules resulted in approval on March 30, 2005 (HCR 1011 was introduced on March 23, 2005 for the purpose of disapproving proposed amendment to OAC 710:60-3-17(a) as of the date of this submission it has not been approved by the Legislature.)
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n/a

ANALYSIS:
710:60-1-3 was modified pursuant to Senate Bill 1120, § 3, which allowed the Commission to release confidential information regarding commercial registrations. [**47:1109**]

710:60-3-21 was modified pursuant to Senate Bill 1120, § 4, which provided for a charge of $4.00 for all replacement license plates. Previously, a payment of $4.00 was required for a replacement plate in every month except the month of renewal. [**47:1113**]

710:60-3-22 was modified pursuant to Section 5 of the bill, which expands the fee and excise tax waiver available for vehicles donated to nonprofit charitable organizations. [**47:1115(G)**]

710:60-3-54 was modified pursuant to Section 2 of the bill, which allows licensed motor vehicle dealers to reassign out-of-state titles to used motor vehicles under certain circumstances. [**47:1105**]

710:60-3-92 was modified pursuant to Section 9 of the bill, which removes provisions of the commercial vehicle registration process that require the filing of an affidavit of commercial use. [**47:1133.1**]

710:60-3-202 was modified pursuant to Section 1 of the bill, which defines "special mobilized machinery" to include the term "devices." [**47:1102**]

710:60-5-1 was modified pursuant to Section 2 of the bill, which provides an exception to registration requirements for vehicles titled by anyone in another state and used in interstate commerce. Previously, the exception applied only if the vehicle was titled and used in interstate commerce by the person applying for registration in Oklahoma. [**47:1105**]

710:60-9-120 was modified pursuant to Section 10 of the bill, which requires motor license agents to reimburse the Commission for all costs incurred when relocating an existing agency, except in cases of emergency or unforeseen business conditions beyond the control of the agent, when they may be waived. [**47:1143.2**]

710:60-9-134 was modified pursuant to Section 11 of the bill, which authorized the Commission to utilize motor license agents to perform additional duties. [**47:1140**]

Existing Section 710:60-3-20 has been amended to implement the provisions of House Bill 1896 §3 which states that operating a vehicle in this state requires that the license plate be clearly visible at all times, regardless of where registered, and prohibits covering a license plate with any material whatsoever. [**47:1113(A)(2)**]

Existing Sections 710:60-3-114 and 710:60-7-4 have been amended to conform to the provisions of Senate Bill 1504 §1-2 which provides "frac tanks" shall qualify for the annual registration set out in Section 1133 and be subject to the levy of vehicle excise tax. [**47:1133 / 68:2103**]

Existing Sections 710:60-3-150; 710:60-3-151; 710:60-3-152; 710:60-3-160; 710:60-3-168; 710:60-3-169; and 710:60-3-170 have been amended to delete references to obsolete forms and to conform to the provisions of House Bill 1994, which provides that if a person qualifies for a disabled veterans license plate and is also eligible for an insignia as a physically disabled person under the provisions of 47 O.S. Section 15-112, the person will be eligible to receive a disabled veterans license plate that also displays the international accessibility symbol. [**47:1135.1-1135.6**]

Existing Section 710:60-5-60 has been amended to comply with the provisions of House Bill 2470 § 30 which provides that vehicles sold by licensed sellers to foreign buyers pursuant to the Automotive Dismantlers and Parts Recycler Act must have titles stamped to indicate that they are for export and cannot be transferred in the United State. Sellers must also supply the Tax Commission with certain information from those sales. [**47:1105(T)**]

Existing Section 710:60-5-115 has been amended to conform to House Bill 2230 which provides for recognition under Oklahoma law of security interests in vehicles registered by federally-recognized Indian Tribes, when they are validly perfected under the applicable tribal laws and the lien is noted on the face of the tribal certificate of title. [**47:1110**]

Existing Section 710:60-5-116 §1 has been amended so as be consistent with the provisions of House Bill 2101 which grants class AA wreckers an exemption from all prior years' tag fees, stop flag fees, and any other fees imposed by state law from prior ownership of the vehicle when performing any abandoned vehicle auction. [**42:91.1**]

Existing Sections 710:60-3-11 [**47:1132**]; 710:60-3-17 [**47:7-602**]; 710:60-3-98; 710:60-3-133 [**47:1110**]; 710:60-3-162; 710:60-5-4 [**47:1107**]; 710:60-5-7 [**47:1109**]; 710:60-5-111 [**47:1110**]; 710:60-5-113 [**47:1110**] and 710:60-9-116 have been amended to clarify policy, ensure internal consistency, simplify procedures, and streamline forms and required documentation in various areas.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

710:60-1-3. Confidentiality of motor vehicle information

(a) **Procedure for release of vehicle and lien information.** Vehicle and lien information may be released only to qualified requestors upon completion of OTC Form 769 and remittance of the statutory fee, or to qualified requestors completing the "Service Contract for Purchase of Oklahoma Motor Vehicle Registration (MVR) Database" with the Tax Commission.

(b) **Who may obtain vehicle and lien information.** Vehicle and lien information may be released to:

(1) The current owner;

(2) An individual, on behalf of the current owner, with written authorization;

(3) A licensed wrecker or towing service, for notification to owners;

(4) A legitimate business, for purposes of:

(A) Verifying the accuracy of personal information submitted to the business by the individual to whom the requested information pertains; or

(B) Obtaining correct information for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual to whom the requested information pertains;

(5) A requestor who is to use the information in conjunction with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency, or before any self-regulatory body. Use may include service of process, investigation in anticipation of litigation, and the execution or enforcement of a judgment or order;

(6) A requestor, pursuant to an order of any court;

(7) An insurer or insurance support organization;

(8) A licensed private investigative agency or licensed security service, for purposes permitted by 47 O.S. § 1109(A);

(9) A governmental or law enforcement agency, or a court, for use in an official function;

(10) Any person compiling and publishing motor vehicle statistics, provided that names and addresses of individuals shall not be disclosed;

(11) Any motor vehicle manufacturer or an authorized representative thereof, in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of non-owner records from the original owner records of motor vehicle manufacturers; or,

(12) For use in connection with the operation of private toll transportation facilities.

(13) For furnishing the name and address of all commercial entities who have current registrations of any particular model of vehicle; provided, this exception shall not allow the release of personal information pursuant to the provisions of the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721 through 2725.

(c) **Insurance information release.** Insurance information, including insurer and policy number, may be released to a law enforcement officer investigating an accident pursuant to 47 O.S. § 10-104.

(d) **Penalties for the release of prohibited information.** The release of any information not specifically authorized by statute, as described in subsections (b) and (c) of this Section, is strictly prohibited, and may be subject to penalties enumerated in 47 O.S. § 1109(H).

(e) **Penalties pursuant to the Drivers Privacy Protection Act.** In addition to penalties provided under state law, certain provisions of federal law, under the Drivers Privacy Protection Act, may apply.

(1) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to criminal prosecution as provided in 18 U.S.C.A. § 2721, et seq.

(2) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to civil penalties of actual damages not less than $2,500.00; punitive damages, reasonable attorneys' fees, litigation costs, and such other relief the court determines to be appropriate.

(3) Any state agency violating the Drivers Privacy Protection Act (DPPA) is subject to a civil penalty of not more than $5,000.00 for each day of substantial noncompliance.

(f) **Types of information released.** The form, formats, media, and sources of information provided under this Section may be available for a statutorily provided fee:

(1) Current ownership or lienholder information may be provided to qualified requestors by the Oklahoma Tax Commission and Motor License Agents.

(2) Computer-generated title history information may be provided by the Oklahoma Tax Commission.

(3) Microfilm title history information may be provided by the Oklahoma Tax Commission.

(4) Certified microfilm title history may be provided by the Oklahoma Tax Commission.

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-11. Determining number of years registered

(a) **Procedure for determining years of registration.** To determine the year of registration fee to be assessed, refer to the date the vehicle was originally sold, if possible. When the date first sold is unknown and the year of registration is not available on the Motor Vehicle computer system, the registration year will be determined by subtracting the model year of the vehicle from the registration expiration year. For example, a ~~1987~~ 2000 model being registered to expire in ~~1992~~ 2005 would be assessed the fifth (5th) year rate ~~(92 - 87 = 5)~~ (2005 - 2000 = 5). An exception to this policy would be when a previously titled one year old vehicle is entering the state. (~~1991~~ 2004 model being registered to expire in ~~1992~~ 2005). In that instance, second (2nd) year registration fee should be assessed.

(b) **Limited application; procedure not applicable to excise tax.** The above procedure will be used only when the date first sold of a vehicle is unknown and unavailable. ~~This procedure does not apply to the assessment of excise tax, if due.~~

710:60-3-17. Liability insurance

(a) **Insurance verification form.** The owner of a motor vehicle to be registered or titled in this state must surrender a current insurance security verification form to the tag agent prior to the processing of his registration, unless otherwise provided. Photocopies or faxes of current, valid verification forms are acceptable for vehicle registration purposes. The security verification shall contain the following information:

(1) Name and address of the carrier.

(2) The name and address where security may be verified, if other than carrier.

(3) Name of insured.

(4) Notice that an owner's policy has been issued pursuant to Compulsory Insurance Law.

(5) Year, make, and at least the last three digits of the VIN of each insured vehicle. (Note: Not required if Owner's form states "Fleet Coverage.")

(6) Inclusive dates liability policy is in effect.

(7) A warning to the owner of state law requirements that one copy be surrendered on registration and one copy carried in the vehicle.

(b) **Registration in conformity with insurance period.** The registration should be issued only within the inclusive dates shown on the certification form.

(c) **Trailers; boats; vehicles not in use.** Trailers or Boats are not included in the motor vehicle category and will not require a security verification form. Owners of vehicles not in use at the time of registration may register their vehicle upon signing a Non-Use Affidavit (OTC Form 797).

(1) The yearly validation decal issued to the owner of a vehicle who has filed a Non-Use Affidavit (OTC Form 797) in lieu of liability insurance verification will be issued a decal of a separate and distinct color from all other yearly decals. It shall be the owner's responsibility to obtain insurance if such vehicles are put into service at a later time.

(2) The owner of the vehicle is not required, upon putting the vehicle back in service, to purchase another decal indicating the liability insurance coverage. If the owner chooses to purchase another decal, a valid insurance verification form will be required and payment of a replacement tag/decal fee, and the insurance verification fee.

(d) **Fleet vehicles.** On blanket coverage of fleet vehicles, the year, make and serial number are not required on the certification form. It shall bear the term "Fleet Coverage." This term shall be typed or written on the lower right hand portion of the registration certificate by the tag agent.

(e) **Exceptions to insurance verification requirements.** The following shall not be required to surrender a security verification form to the tag agent.

(1) Any vehicle owned or leased by the Federal or State Government or any agency or political subdivision thereof.

(2) A company owned vehicle bearing the symbol or logo which, according to the records of the Department of Public Safety, reflects a deposit, bond, self-insurance, or fleet policy. (These companies will be issued an equivalent form from the Department of Public Safety.)

(3) Any vehicle authorized for operation under a permit number from the Interstate Commerce Commission or the Oklahoma Corporation Commission.

(4) Any licensed taxicab.

(5) Any vehicle held for sale by a licensed Used Car Dealer.

(f) **Processing fee authorized.** The ~~motor license agent~~ Motor License Agent is authorized to charge a fee for processing a security verification form or Non Use Affidavit upon registration of a motor vehicle.

(g) **Military personnel insurance verification.** Members of the United States Armed Forces may furnish a vehicle insurance policy or bond from an out-of-state insurance company indicating compliance with the liability insurance requirements of the Oklahoma Vehicle License and Registration Act. If the service person is an out-of-state resident who is stationed in Oklahoma, the form must be from Oklahoma or from the service person's state of residence, as indicated on the Armed Forces Affidavit (OTC Form 779). If the service person is a resident of Oklahoma, the form must be either an Oklahoma form, or a form from the state in which the service person is currently stationed.

710:60-3-20. Display of vehicle license plates

(a) Vehicle license plates shall be firmly affixed to the rear of the vehicle, provided however, trucks registered under the International Registration Plan shall have the plates firmly attached to the front.

(b) Trucks with a gross vehicle weight rating exceeding 26,000 pounds may have the plates firmly attached to the front or rear.

(c) Vehicle license plates shall be a affixed and displayed in such a manner that the letters and numerals shall be read from left to right parallel to the ground.

(d) No vehicle license plate may be displayed in an inverted or reversed position, or in such a manner that the letters and numerals are not readily identifiable.

(e) No vehicle license plate may be displayed in this state, regardless of where such vehicle is registered, which has been covered, overlaid, or otherwise screened with any material, whether such material is clear, translucent, tinted, or opaque.

710:60-3-21. Lost, stolen or mutilated tags and decals

(a) **Procedures upon the loss, theft, or damage to tag or decal.** In the event of loss, mutilation, or destruction of a license plate and/or decal, an "Affidavit for Replacement Tag and/Or Decal" (797D) must be completed by the applicant. The affidavit will not be required if issuing a new tag when renewing an annual registration or when issuing a new tag due to a vehicle class change.

(b) ~~**When no additional fee due.** A new tag may be issued upon the annual renewal at no additional charge.~~

~~(c)~~ **When additional fee is due.** If a new tag and/or decal is requested at the time of transfer or annual registration renewal and is not needed due to vehicle class change ~~or tag expiration, the~~ an additional replacement fee is to be charged.

710:60-3-22. Charitable organization vehicle registration

(a) Vehicles ~~being transferred or reassigned by~~ donated to a charitable organization licensed through the Oklahoma Secretary of State's Office ~~to a current or potential recipient of Temporary Assistance to Needy Families, as certified by the Oklahoma Department of Human Services,~~ are exempt from delinquent registration fees, excise tax, and ~~or~~ penalties. The charitable organization is responsible only for a title fee, when applicable.

(b) ~~Vehicles being transferred by a licensed charitable organization to individuals who are not recipients of Temporary Assistance to Needy Families are exempt from delinquent fees and penalties only if such fees are over one (1) year delinquent.~~

~~(c)~~ Should ownership of a vehicle on which delinquent taxes are due be assigned to a licensed charitable organization and subsequently reassigned back to the donor, all delinquent taxes and fees again become due.

PART 5. DEALERS

710:60-3-54. Used vehicle dealer's registration policy

(a) **Renewal not required; registration to be current when vehicle acquired.** A licensed used trailer dealer or used motor vehicle dealer is not required to renew the registration of a vehicle that expires on his lot while being held for resale, provided the registration was current when the vehicle was assigned to him. However, any dealer who is assigned a vehicle when it is in the registration penalty period must renew the registration for a full year, paying any penalty due. Manufactured home dealers are required to keep all manufactured homes registered. [**See:** 710:60-3-132, paragraph (5)]

(b) **Used vehicles acquired from other states.** Used vehicles from other states, acquired for resale by Oklahoma used dealers require an Oklahoma title in the dealership name. No registration is required. Used motor vehicles acquired from other states by licensed Oklahoma motor vehicle dealers may either be titled in the dealership's name, or ownership may be reassigned by the dealership on the out of state title. When reassigning an out of state title, the motor vehicle dealer must satisfy the inspection and dealer reassignment provisions of 47 O.S. § 1105.

(c) **Exemption from transfer registration fee; revenue stamps required.** Used Vehicle Dealers are exempt from the transfer registration fee when getting a transfer title in their name. However, each time a used dealer makes an assignment, a revenue stamp must be attached on the back of the Oklahoma Title. Commercial trailer dealers or manufactured home dealers are not required to attach tax stamps.

(d) **Removal of out-of-state license plates.** If a dealer obtains a vehicle with an out-of-state tag, it should be removed. If the vehicle has an Oklahoma tag, it shall remain on the vehicle.

(e) **Procedure upon sale of vehicle.** When a used dealer sells a vehicle, he shall advise the owners to title and register the vehicle within thirty (30) days. If the Oklahoma plate is still current, the new owner shall title, pay excise and a transfer registration fee. If, on the assignment date, the decal has expired, the new owner must register from the month of assignment. The transfer registration fee would be due at the time of registration.

PART 9. COMMERCIAL VEHICLES

710:60-3-92. Additional display requirements

(a) **Application.** The additional guidelines in this Section apply to all commercial trucks registering at 15,000 lbs. and under. Commercial Trucks include pickups and other vehicles on a truck chassis. Passenger vehicles may not be registered as a commercial truck.

~~(b) **Affidavit of commercial use.** An Affidavit of Commercial Use For Vehicles With Combined Laden Weight of 15,000 lbs. or Less (OTC Form 745) must be completed and attached to the Oklahoma Tax Commission copy of the receipt upon the initial registration, renewal registration and transfer of ownership.~~

(~~c~~b) **Requirements upon initial registration or transfer of ownership.** Upon an initial registration or transfer of ownership, one of the following three ~~additional~~ items must be submitted ~~and listed on the Commercial Use Affidavit~~:

(1) Sales Tax Permit Number

(2) Federal Employer I.D. Number, or

(3) If owner is sole proprietor, a copy of Schedule C of most recent income tax return.

~~(d) **Renewal requirements.** Upon registration renewal, a Commercial Use Affidavit must be completed, listing a description of how the required sign reads on the vehicle. If the sign description listed on the affidavit by the vehicle owner reflects the actual name of the business,~~
~~no additional documentation is required to renew the commercial registration. If the sign description listed on the affidavit by the vehicle owner reflects that the sign reads "Commercial Vehicle" one of the additional three proofs (Sales Tax #, Federal Employer I.D. #, Schedule C) must be submitted in order to renew the commercial registration.~~

(~~e~~c) **Procedure for change of weight classification.** The weight may be raised on commercial trucks or tractors during the registration period on an additional tax receipt. The rate on a weight change will be the fee due on the new laden weight for the remaining portion of the registration, less the unused portion of the registration at the previous weight, less the administrative fee.

710:60-3-98. Prorated vehicles [REVOKED]

~~(a) **Prorate license plate not transferable.** A prorate license plate issued to a truck or truck-tractor that has been registered in accordance with the provision for proportional registration, cannot be reassigned to a new owner upon the transfer of ownership of such truck or truck-tractor.~~

~~(b) **Return of prorate license plate upon sale or trade.** If a truck or truck-tractor is proportionally registered by the Prorate Vehicle Section, Motor Vehicle Division, and is subsequently sold or traded, the prorate license plate issued to such truck or truck-tractor is required to be returned to the Prorate Vehicle Section. Under no circumstances can the prorate license plate be reassigned and, or, used by a new owner of such truck or truck-tractor.~~

~~(c) **Registration procedures upon transfer of ownership.** Upon the change of ownership of a truck or truck-tractor that has been registered as a prorate vehicle, the new owner must re-register such truck or truck-tractor. The new owner may purchase a full Oklahoma license plate, which can be issued by a motor license agent, or, make application to the Prorate Vehicle Section to proportionally register the involved vehicle in the name of the new owner, provided, the new owner qualifies for proportional registration. In either case, a new license plate will be issued.~~

~~(d) **Interstate, out-of-state registration.** A truck or truck-tractor intending to prorate or any interstate trailer that has been registered in another state at least 60 days prior to the time it is required to be registered in this State, may receive an Oklahoma title at no charge.~~

PART 11. OTHER VEHICLES

710:60-3-114. Fractionation tanks (frac tanks) not eligible for registration

(a) **"Frac tank"** means any portable or stationary, high-volume holding vessel designed and constructed for use in separating, storing, or temporarily holding materials used in or resulting from fracturing techniques used in oil and gas exploration. [17 O.S. § 54 et. seq]

(b) Mobile frac tanks do not qualify for special mobilized machinery registration.

(c) ~~Mobile frac tanks do not qualify for commercial trailer registration.~~ Nonrenewable commercial trailer license plates are issued to frac tanks, under the same conditions, and at the same rates applicable to commercial trailers.

~~(d) A mobile frac tank is classified as personal property and is subject to the provisions of the Oklahoma Ad Valorem Tax Code.~~

~~(e) The sales tax levied by 68 O.S. § 1354 applies to the gross receipts or gross proceeds from the sale, rental, or lease of mobile frac tanks, unless otherwise exempted.~~

PART 13. MANUFACTURED HOMES

710:60-3-133. Cancellation of manufactured home title

Owners of manufactured homes that have been permanently affixed to real estate may make application to cancel the Oklahoma certificate of title. Only the owner of record on the Oklahoma title, out of state title, or assigned MSO, may make application through the Tax Commission or any ~~motor license agent~~ Motor License Agent.

(1) Owners of new manufactured homes, or previously titled manufactured homes entering from another state, may make application to cancel the Oklahoma manufactured home title before it is issued, by submitting the MSO or out-of-state title for cancellation. The Oklahoma title will be placed on 'CN' (cancel) hold.

(~~1~~2) ~~An~~ Other than as described in (1) of this Section, an Oklahoma certificate of title for the manufactured home in the name of the applicant must be submitted. ~~Applicants unable to produce a certificate of title must obtain a duplicate title before applying for cancellation.~~ If a record owner seeks to cancel a manufactured home certificate of title, but is unable to produce the title certificate, a printout generated from the Commission computer file, verifying record ownership, will suffice in lieu of a title. The printout is to be attached to the Application for Title Cancellation.

(3) Proof of ownership must be submitted to the county assessor's office where the home is located, along with a completed Application for Title Cancellation. The county assessor's office will ensure the title owner and landowner are one and the same, and validate the cancellation application.

(~~2~~4) An application fee ~~of Five Dollars ($5.00)~~ set forth by statute must be remitted with the cancellation application.

(~~3~~5) The Tax Commission or ~~motor license agent~~ Motor License Agent must verify that no active lien appears on the record. If an active lien is reflected, a Cancellation Denial Notice will be given to the owner and the lienholder. The owner will be given a "Notice to Owner of the Existence of an Active Lien upon Application to Cancel Oklahoma Certificate of Title" and the application fee will be returned. The lienholder will be given a "Notice to Lienholder of Application to Cancel Oklahoma Certificate of Title". The Oklahoma title will not be cancelled until all liens are released.

~~(4) If there is no active lien on the records, the applicant must complete an "Application for Title Cancellation of a Manufactured Home Permanently Affixed to Real Estate" Form and a "Notice to County Assessor of Cancellation of Oklahoma Certificate of Title" Form.~~

(~~5~~6) A copy of the "Application for Cancellation Form" and the "Notice to County Assessor Form" will be forwarded to the county assessor of the county in which the property is located by the Motor License Agent after receiving the completed cancellation application documentation, approved by the county assessor's office, and payment of the applicable cancellation fee.

PART 15. SPECIAL LICENSE PLATES

710:60-3-150. Special license plates, general provisions

(a) **General provisions.** Applications for ordering all types of personalized and special license plates, authorized pursuant to the provisions of 47 O.S. ~~§1136,~~ §§ 1135.1 - 1135.6, may be obtained from ~~the Special Tag Section of the Taxpayer Assistance Division at~~ the Oklahoma Tax Commission or from a local motor license agency. ~~Some tag agencies carry a small inventory of various pre-numbered special license plates.~~

(b) **Leased vehicles.** An eligible individual leasing a vehicle may make application for any special tag or registration rate ~~that he or she is entitled to~~. A copy of the lease agreement, listing the applicant as lessor, must be submitted and attached to the Oklahoma Tax Commission copies of the paperwork.

(c) **No conflict policy.** No special license plate can be issued which conflicts with the regular plate numbering system.

(d) **Non-offensive content policy.** No special license plate will be issued which may be offensive to the general public.

(e) **Fees.** Special license plate fees are set by statute and, with certain statutory exceptions, are collected in addition to annual registration fees required by the Oklahoma Vehicle License and Registration Act. If a special license plate or decal is mailed, a mailing fee for a metal plate or decal will also be collected.

(f) **Renewal.** Renewal decals may be obtained from a Motor License Agent or from the Oklahoma Tax Commission for all special plates except Physically Disabled, Hearing Impaired, Amateur Radio, Indian Tribal, Vintage and Municipal Official plates. Special license plates are issued on a staggered system, except for ~~motorcycle plates, amateur radio plates, and~~ vintage decals.

(g) **Discontinuance of a special license plate.** Title ~~47 Section 1136~~ 47, Sections 1135.3 and 1135.5 ~~further provides~~ provide for the discontinuance of any special license plate authorized by such Sections under ~~pursuant to~~ the following conditions:

(1) If fewer than ~~fifty (50)~~ one hundred (100) of any special license plate authorized prior to January 1, ~~2000,~~ 2004, are issued by January 1, ~~2005~~ 2006.

(2) ~~If fewer than fifty (50) of any special license plate authorized after January 1, 2000, are issued within five (5) years after first being offered for sale.~~ For special license plates authorized on or after July 1, 2004, none shall be developed or issued by the Tax Commission until one hundred (100) prepaid applications have been received. The prepaid applications must be received by the Tax Commission within one hundred eighty (180) days of the effective date of the authorization, or the authorization shall be null and void. If the one hundred (100) prepaid applications are not received within the prescribed time period, all fees received will be refunded to the applicants.

710:60-3-151. Personalized license plates

~~Personalized license plates will be issued bearing a maximum of seven letters, seven numbers or a combination of 4 letters and 3 numbers in the standard block type including spaces and hyphens. No punctuation marks or symbols will be used.~~ No personalized license plate that conflicts with the system of numbering for non-personalized plates set out in 47 O.S. § 1113 will be issued. Remittance must accompany the application ~~(OTC Form 749-1)~~ for the plate and is in addition to the annual license fee.

710:60-3-152. Motorcycle personalized license plates

~~Motorcycle Personalized license plates will be issued bearing a maximum of six (6) letters or a combination of 4 letters and two numbers including spaces and hyphens in the standard block type. No punctuation or symbols or a tag with 6 or less numbers can be used. Such plates may be ordered at any time during the year, however, the tag will expire in December.~~ No personalized motorcycle license plate that conflicts with the system of numbering for non-personalized plates set out in 47 O.S. § 1113 will be issued. Remittance must accompany the application (OTC Form 746) and is in addition to the annual license fee.

710:60-3-160. Antique or classic vehicles

(a) **Qualification; application; fees; renewal.** These motor vehicles are at least twenty-five (25) years old and travel on the highways of the state primarily incidental to historical or exhibition purposes only. ~~The rate for an antique or classic vehicle plus an insurance verification fee must accompany the application (OTC Form 763).~~ The insurance verification fee is to be included with the remittance and must accompany the application.

(b) **Limited purpose use of vehicle.** If a vehicle is being driven for any other purpose besides historical or exhibition purposes, the antique or classic tag must be removed and a regular tag issued at the regular rate.

(c) **Procedure upon sale to non-qualifying purchaser.** If an antique or classic vehicle is sold to an individual who will be driving it for other than historical or exhibition purposes, the purchaser must obtain a regular license plate and pay for the remaining portion of the registration period at the applicable rate.

710:60-3-162. Disabled American Veteran (DAV) plates and rate

(a) **Qualification.** Those veterans with at least 50% service connected disability, as certified by the United States Department of Veterans Affairs or a branch of the United States Armed Forces, have the option of receiving their regular plate or a special plate designated "D.A.V." at a reduced rate. Those veterans not desiring the "D.A.V." plate may continue to purchase the regular tag for two (2) vehicles with a rated carrying capacity of one (1) ton or less at any tag agency. An insurance verification fee will also be charged.

(b) **Application; fees; renewal.** To receive the special "D.A.V." plate, the DAV Card or current authorization letter, a photocopy of the current registration, Security Verification Card, and a check which includes mailing fees and insurance for each tag ordered, must be submitted to the Oklahoma Tax Commission. After the initial issuance from the Oklahoma Tax Commission, the plate can be renewed at any tag office.

(c) **Procedure for retention of tag; use on replacement vehicle.** When a vehicle with a "D.A.V." tag is sold, the "D.A.V."

tag is placed on the new vehicle, if any, obtained by the disabled veteran. The registration issued on the replacement vehicle will show the "D.A.V." tag number and decal. The owner may send a photocopy of the new title and current registration to the Special Tags Section or contact the Special Tag Section by telephone.

(d) **Procedure upon sale to non-qualifying purchaser.** When a vehicle is sold by a D.A.V. party to a purchaser not qualified for the reduced rate, the purchaser must pay for the remaining portion of the registration period at the applicable rate. When a vehicle is sold which has been registered at the reduced rate and issued a metal DAV plate, the purchaser will be issued a regular metal plate and charged the applicable rate.

710:60-3-168. Indian tribal license plates

(a) **Qualification; application; renewal.** Vehicles titled in the name of a federally recognized Indian tribe only and used for the furtherance of that tribe, may be issued Indian Tribal tags. Applications ~~(OTC Form 759)~~ and renewals for such vehicles are made directly to the Oklahoma Tax Commission. The annual fee plus an insurance security verification fee must accompany application.

(b) **Retention of tag by tribe; transfer to replacement vehicle.** When a vehicle with a Tribal tag is sold, the tribe retains the special tag. The tag may be transferred to the replacement vehicle. The tag cannot be transferred to another tribe.

(c) **Procedure upon sale to a non-qualifying purchaser.** When a vehicle is sold by a tribe to a purchaser not qualifying for the reduced rate, the purchaser must register the vehicle from the date of sale at the applicable fee and obtain a standard license plate.

710:60-3-169. Physically disabled registration rate

(a) **General provisions; fee.** Those persons qualified through the Department of Public Safety as being physically disabled may register a vehicle that is specially equipped due to the disability of the owner or of a family member related within the second degree of consanguinity, for a reduced fee plus an insurance verification fee. An ~~OTC Form 760~~ Affidavit for Physically Disabled Registration Rate must be completed by the owner and accompany the request for the reduced rate.

(b) **Procedure upon sale to non-qualifying purchaser.** When a vehicle is sold by a disabled party to a purchaser not qualifying for the reduced rate, the purchaser must pay for the remaining portion of the registration period at the applicable rate.

710:60-3-170. Physically disabled persons

(a) **Free plate available to qualifying persons.** A special tag displaying a stylized human figure may be ordered at no charge. For an additional fee, an eligible applicant may apply for a duplicate license plate for display on the front of applicant's vehicle. The applicant must have a Disabled Parking Permit from the Department of Public Safety to qualify for this plate. Special parking privileges may be extended to a physically disabled person who displays a five-year placard, a temporary placard, or a physically disabled license plate, on a motor vehicle, operated by or under the direction and for the use of the physically disabled person, pursuant to ~~the provisions of 47 O.S. § 1136~~ statute.

(1) **Procedure for obtaining certification from Department of Public Safety.** To receive the Disabled Parking Permit, an application may be obtained from the Department of Public Safety. The application must be completed by a physician licensed to practice medicine.

(2) **Procedure for ordering license plate.** To order the tag, ~~obtain OTC Form 750C (Application for Handicapped Plate) and mail~~ a completed Application for Handicapped Plate must be submitted to the Oklahoma Tax Commission~~, Taxpayer Assistance Division~~.

(3) **Renewal.** The handicapped plate will be renewed by the Oklahoma Tax Commission upon proof of current registration.

(b) **Special registration rate may apply.** If a vehicle is modified as a direct result of the physical disability of the owner, or of a relative of the owner within the second degree of consanguinity, a special registration may be available. The disabled individual must qualify for a Department of Public Safety Disabled Parking Permit. The vehicle modification must be permanent, and of a nature that could not be considered standard equipment, or normal, optional, vehicle equipment. Examples of qualifying modifications are hand controls, raised foot pedals, or wheelchair lifts. Vehicle modification eligibility determinations will be made by the Oklahoma Tax Commission.

(c) **Procedure for obtaining special rate.** An applicant for the special rate must complete an affidavit describing the modification made to the vehicle and listing the applicable Department of Public Safety insignia number, recipient's name, and recipient's relationship to the vehicle owner.

PART 17. SPECIAL PERMITS

710:60-3-202. Special mobilized machinery

(a) **Description.** Special Mobilized Machinery are special purpose machines or devices which derive no revenue from transportation of persons or property. The machinery's use of the highway is only incidental. The owner must elect to register the equipment as Special Mobilized Machinery.

(b) **Qualification certificate and fee.** Once the owner has elected to register the vehicle as Special Mobilized Machinery, it is required to have a qualification certificate (authority) before any registration or permit can be issued. The qualification certificate can be reserved by calling (405) 521-2830. The fee for the qualification certification is to be collected by the ~~motor license agent~~ Motor License Agent and sent by separate mail to the Oklahoma Tax Commission Cashier. The qualification certificate is good for as long as the title does not change names. If this qualification certificate is lost, a new one must be purchased.

(c) **Motor license agent to issue title and registration.** Agents are authorized to issue title and collect excise tax on these vehicles. The ~~motor license agent~~ Motor License Agent will issue a Special Mobilized Machinery Registration using

the qualification certificate number assigned by the Oklahoma Tax Commission Cashier. The qualification certificate number must be typed in the lessee field of the registration.

(d) **Registration fee; expiration; penalties.** The fee for a full year registration is set forth by statute. All Special Mobilized Machinery registrations expire in December. On February 2 the registration fee doubles. Trailer mounted Special Mobilized machinery does not get a permanent trailer tag. It must be issued an expiring trailer plate to be renewed each year with the appropriate decal.

(e) **Reciprocity for out-of-state vehicles; fees.** If a Special Mobilized Machinery is only passing through the state of Oklahoma, from border to border, and not staying to work off-road, the current registration from another state will be honored. If a Special Mobilized Machine is staying to work in the State of Oklahoma, it must be registered for the remainder of the year and a qualification certificate must be purchased. The only exception to this is Special Mobilized Equipment which will be used only for the construction of highways or road material production in Oklahoma.

(f) **Basis of registration not related to weight classification.** Special Mobilized Machinery is not registered on the basis of laden weight and does not, therefore, qualify for the reduced excise tax rate that heavy weight commercial trucks are entitled to.

(g) **Truck mounted special mobilized machinery.** When in storage, truck mounted special mobilized machinery may be renewed for the weight of the vehicle only. Minimum weight is 15,000 pounds, with no reduction in fee for the number of years registered. Once the vehicle is returned to service, tax will be due for any remaining calendar quarters.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 1. GENERAL PROVISIONS

710:60-5-1. Certificate of title required

Except for those vehicles that are proportionally registered with the Oklahoma Corporation Commission, pursuant to the Trucking One-Stop Shop Act, 47 O.S.Supp.2004, § 160 et seq., ~~The~~ the owner of every motor vehicle shall possess a certificate of title as proof of ownership of such vehicle.

710:60-5-4. ~~Title in more than one person~~ Multiple owners

(a) ~~When issuing an Oklahoma title to more than one person, should "and" be used, all parties must sign the assignment to sell the vehicles. When "or" or "and/or" is used, any of the parties may sign the assignment.~~ When multiple owners are listed on vehicle ownership documentation, whether a title document or ownership assignment document, and there is no distinction as to whether ownership is to be joined by '**and**', '**and/or**', or '**or**', the resulting Oklahoma title is to be issued reflecting ownership joined by '**and**'.

(b) ~~If more than one name is listed and there is no distinction whether assignment is "and", "and/or", or "or", the title will be issued with "and".~~ When transferring ownership from a title document which lists multiple (former) owners, the following assignment guidelines apply:

(1) When ownership is joined by '**or**' or '**and/or**', any one of the owners may assign ownership.

(2) When ownership is joined by '**and**', all owners are required to assign ownership.

710:60-5-7. Vehicle title records research

Vehicle title records research will be conducted upon receipt of a qualified request and will be subject to the conditions and fees outlined in 47 O.S. § 1109, with the following exceptions:

(1) When researching an error on the most recent title transaction completed in this state at the request of the title-holder or a Motor License Agent, the research will be conducted at no charge and the requestor advised of the source of the error. If the error is attributable to a Motor License Agent, a corrected title will be issued at no charge to the title-holder. If the error resulted from information or documentation submitted by, or on behalf of, the owner, the requestor will be so advised. Should the owner take the necessary corrective actions and apply for a new title, applicable titling fees will apply. If any requesting party wishes to receive copies of some or all of the researched documentation, normal research fees will apply.

(2) Title research will be conducted for, and document copies provided at no charge, to Motor License Agents requesting research directly related to errors or omissions, or both, claimed against the motor license agency.

PART 5. CERTIFICATES OF TITLE

710:60-5-60. Vehicles purchased by foreign buyers pursuant to the Automotive Dismatlers and Part Recycler Act

The licensed seller of a vehicle sold to a foreign buyer under the provisions of the Automotive Dismantlers and Parts Recycler Act shall stamp the title with: "**EXPORT ONLY. NONTRANSFERABLE IN THE UNITED STATES.**" The seller shall notify the Tax Commission, on a form prescribed by the Commission, of the title number, the vehicle identification number, and the foreign buyer's bid identification number. The Tax Commission will cancel the Oklahoma title, preserving the vehicle identification number in the Commission computer files for a period of not less than five (5) years.

PART 11. LIENS

710:60-5-111. Perfecting liens

(a) **Documents required for perfecting lien.** Before perfecting a lien, an Oklahoma title, boat or motor title, or an Application for Oklahoma Title accompanying a Manufacturer's Statement of Origin or out-of-state title must be presented, along with a completed Lien Entry Form.

(b) **Lien form ~~to be typewritten~~ must be legible.** ~~All~~ To be acceptable, all lien entry forms must be ~~typed~~ clearly legible, as determined by the Tax Commission. ~~No handwritten forms will be accepted.~~

(c) **Secured party information.** The secured party must have completed his part of the form, particularly the signature and date of execution. Strikeovers and off line printing are not acceptable.

(d) **Title to conform to lien entry form.** The name of the secured party will be entered on the face of the secured title exactly as it appears on the lien entry form.

(e) **Title receipt reflecting lien to be issued; fees.** When recording a lien on a registered vehicle, boat or motor, used as collateral, a title receipt must be issued to reflect the lien. A title fee in addition to the lien fee will be charged.

(f) **Procedure for removal of lien entry from title.** An owner may secure a new title omitting reference to a security interest by presenting the lien release and tendering payment for the new title.

(g) **Certain liens not perfectible under Motor Vehicle Code.** Lien Entry Forms cannot be accepted on any vehicle that cannot be issued an Oklahoma Certificate of Title. As an example, farm tractors or mobilized farm machinery cannot be issued a title. A lien cannot be perfected under the Motor Vehicle Code because a title will never be issued.

710:60-5-113. Lienholder notification

(a) **Procedures for entry of lien on Oklahoma title documents.** A tag agent or the Tax Commission must complete a lien entry form on any vehicle registering for the first time in Oklahoma, if the submitted documentation contains the name of a secured party, or if the title certificate is being held by the secured party in another state. The owner of a vehicle on which there is an existing lien or encumbrance and whose title is being held by a secured party in another state shall file an affidavit to that effect with the Commission or the ~~motor license agent, stating that title to the vehicle is being held by a secured party and has not been issued pursuant to the laws of the state where titled, and that there is an existing lien or encumbrance on the vehicle~~ Motor License Agent. The current name and address of the secured party or lienholder shall also be stated in the affidavit. The lien will be shown on the face of the original Oklahoma title.

(b) **Notification procedure.** The lien entry form and releases will be mailed to the creditor, along with an explanatory letter. When an out-of-state lienholder is holding the out-of-state certificate of title, the lienholder will be requested to send the title to the Commission, so that an Oklahoma title with the lien noted thereon may be delivered to the debtor.

(c) **Fees.** The total charge for completing and recording the lien as set forth by statute will be paid by the person registering the vehicle (owner).

(d) **Releasing liens.** When releasing the lien, the lienholder shall return ~~copy 3 of the~~ one lien ~~entry~~ release form, signed and dated, to the Tax Commission, and ~~copy 4 of the~~ one lien ~~entry~~ release form, signed and dated, to the debtor. If the lien release forms are unavailable, a notarized lien satisfied statement may be utilized. If the owner presents an out-of-state title with the release portion signed and dated, a release lien Oklahoma title can be issued.

710:60-5-115. Recording liens on certificates of title

(a) **Lien perfected with M. S.O.** When an M.S.O. is presented ~~stamped "Lien Perfected"~~ reflecting a lien entry stamp, the lien noted on the assignment of the M.S.O. or ~~#6 copy~~ the lien entry form, will be ~~shown~~ reflected on the title ~~receipt~~ issued. The ~~lien~~ title must ~~show~~ reflect the date and time ~~shown~~ on the lien entry stamp.

(b) **Oklahoma Title on which a lien ~~perfected~~ has been entered.** When ~~presenting~~ presented with an Oklahoma Title on which a lien ~~perfected~~ entry stamp appears, the lien information from the back of the title or ~~from copy #6 of~~ the Lien Entry Form will be transferred to the ~~face of the~~ title issued.

(c) **Generally, lien information is ~~shown~~ reflected on the face of the transferred title ~~receipt~~.** When transferring an assigned Oklahoma Certificate of Title with a lien on the face of the assigned title, the lien information must be ~~shown~~ reflected on the face of the transferred title ~~receipt~~ issued, unless a lien release is received.

(d) **Lien perfected from Indian Tribal Certificate of Title.** A security interest in a vehicle registered by a federally-recognized Indian tribe shall be deemed valid under Oklahoma law if validly perfected under the applicable tribal law, and the lien is noted on the face of the tribal certificate of title.

710:60-5-116. Mechanics' liens under Title 42 of the Oklahoma Statutes

(a) **Prior approval required.** Any person who wishes to sell a vehicle for storage fees or work done for which they have not been compensated must submit proper documentation to the Tax Commission for approval.

(b) **Forms available.** A packet of the forms required (OTC 752, OTC 752A and OTC 752B) may be obtained from the Tax Commission.

(c) **Procedure for completion and submission of forms.** Do not send incomplete or altered forms. OTC Form 752B is required to be submitted on safety paper. Photocopies of this form are not acceptable.

(d) **Persons qualified to file mechanics' liens.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due such person from the owner for such service. The required ownership and lienholder information are described by guidelines established in OAC 710:60-1-3. Generally, the person filing a mechanics' lien must have possession of the property at least thirty (30) days prior to the date of filing. Exceptions to the thirty-day possession requirement are:

(1) Manufactured homes, where the possession requirement is fifteen (15) days; and,

(2) Junk vehicles in possession of a Class AAA wrecker service, where the possession requirement is five (5) days. [**See:** 710:60-5-55]

(e) **Manner of foreclosure.** Said lien may be foreclosed by a sale of such personal property upon the notice and in the manner following. The notice shall contain:

(1) The names of the owner and any other party or parties who may claim any interest in said property.

(2) A description of the property to be sold.

(3) The nature of the work, labor or service performed, material furnished, and the date thereof.

(4) The time and place of sale.

(5) The name of the party, agent or attorney foreclosing such lien.

(f) **Notice requirements.**

(1) **General requirements.** Such notice shall be posted in three (3) public places in the county where the property is to be sold at least ten (10) days before the specified time of the sale. A copy of the notice shall be mailed to the owner and any other party or parties claiming any interest in the property, if known, at their last known post office address by registered mail on the day of posting. Any party or parties claiming an interest in the property shall include owners of chattel mortgages and conditional sales contracts as shown by the records at the Oklahoma Tax Commission. A receipt for certified mail must be included in the application for title.

(2) **Notice to owner and other interest holders prior to sale.** Since the purchaser of a vehicle possessed by a mechanic or garage man has priority over the secured party's lien, the mechanic or garage man may sell the vehicle upon notifying the owner and any other party who may claim any interest in the vehicle, of the amounts due for the repairs or storage of the vehicle and the date on which the vehicle will be sold.

(3) **Notice when owner is unknown.**

(A) **Notice by publication.** If a vehicle owner is unknown, Section 2004 et. seq. of Title 12 of the Oklahoma Statutes makes provision for a notice by publication.

(B) **Affidavit of notice by publication.** The notice has to be published for one day each week for a three week period in the county where the vehicle is located. After the publication is completed, ~~a receipt of a copy of~~ an affidavit for the notice by publication will be acceptable as an enclosure ~~to the repossession~~ under Section 92 of Title 42 of the Oklahoma Statutes.

(g) **Sale and distribution of proceeds of sale.** When the vehicle is sold, the special (possessory) lien holder, upon satisfying the amounts due to him/her must make arrangements for the payment in excess of the amounts due to him to be paid to the secured party or parties and to the owner of the vehicle.

(h) **Effect of foreclosure on purchaser's title.** The purchaser of the vehicle will receive a Certificate of Title without any liens indicated. [**See:** 42 O.S. §91 et seq.]

(i) **Abandoned vehicle auction.** Any vehicle offered at an abandoned vehicle auction performed by a Class AA wrecker service is exempt from all prior year registration fees, title fees, stop flag fees, and any other fees imposed by the state resulting from the prior ownership of the vehicle. However, if the purchaser is the registered owner of the vehicle prior to towing, any outstanding prior years' fees will be due.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-4. Excise tax on heavy-weight trucks and commercial trailers

(a) Any truck or truck-tractor carrying a laden weight or a combined laden weight of 54,001 lbs. or more, ~~and~~ any cargo-carrying commercial trailer, and any frac tank shall pay ~~an Excise Tax as~~ a specified excise tax amount set forth by statute. This excise tax amount is due on original or transfer titles.

(b) This rate does not apply to Special Mobilized Machinery, forest product vehicles, trailers or semitrailers which have been manufactured, modified or re-manufactured for the purpose of providing services other than transporting cargo over the highways. Nor is rate described in this Section applicable to pickup trucks, vans, or sport-utility vehicles, which are assessed at the standard vehicle excise tax rate, regardless of laden weight.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 11. AGENCY OPERATION

710:60-9-116. Motor license agent training and continuing education

(a) **Training.** A newly appointed agent will be given a three (3) to four (4) day indoctrination, encompassing policies and procedures involved in the issuance of certificates of title, registrations and other matters pertaining to the duties and responsibilities of a Motor License Agent.

(b) ~~**Mandatory continuing**~~ **Continuing education.** Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Attendance by the Motor License Agent and selected employees at annual motor license agent schools conducted by the Oklahoma Tax Commission is not mandatory, but is strongly encouraged.

710:60-9-120. Summary of operational requirements

The following is a summary of operational requirements for agents and agencies:

(1) Agents are required to operate the agency forty (40) hours a week, of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours~~, upon application in writing,~~ required of a specific agency may be reduced upon written approval ~~by~~ from the Oklahoma Tax Commission.

(2) Agents are required to ~~issue and~~ collect fees as outlined by state statute, and issue all documents ~~on all~~

~~tags, except apportioned (prorate) tags and certain special tags, which are issued~~ (i.e. license plates, registration decals, title certificates) prescribed by the Oklahoma Tax Commission. Additionally, an agent must issue all titles and liens, boats and motors titles - registrations, etc., prescribed by the Oklahoma Tax Commission.

(3) Agents are required to deposit all monies required by the Commission ~~in an~~ into the designated Oklahoma Tax Commission bank account ~~(provided for your agency)~~ within one (1) banking day of collection, preparing an Advice of Deposit which is to be mailed to the Oklahoma Tax Commission immediately after the deposit of those funds.

(4) Agents are required to prepare semimonthly reports to be received by the Oklahoma Tax Commission no later than ten (10) working days after the cutoff day of the report.

(5) Agents must perform all necessary inspections required by the Oklahoma Tax Commission ~~motor license agent's~~ Motor License Agents manual.

(6) Agents are required to provide a notary ~~for motor vehicle documents as needed~~ within their agency.

(7) Agents are required to insure that all items issued and the amounts of the daily deposits are entered into the computer terminal on a daily basis.

(8) The Advice of Deposit shall be mailed in daily to the Oklahoma Tax Commission, Motor Vehicle Division. ~~Copy #2 (yellow)~~ One copy of the Lien Entry Form shall be mailed in daily to the Oklahoma Tax Commission.

(9) Agents are responsible for errors in tax computations and/or fee computations and collections as determined by the Commission.

(10) Agents are required to make payment of all dishonored checks which have been deposited to the Oklahoma Tax Commission bank account so the Oklahoma Tax Commission account will not be charged. If dishonored checks cannot be collected by the agent, they are to be sent to the Oklahoma Tax Commission immediately if the Agent cannot collect the check.

~~(11) All forms must be typewritten, using black ribbons, or printed by computer, including reports and Advice of Deposit slips.~~

(~~12~~ 11) Agents are required to maintain ~~a file of all agent copies of receipts, reports and etc., in numerical order by tax/fee receipt number, issued by that office. This is to include all items and reports issued by agent or the former agents for the previous two (2) years~~ files of all receipts and required reports issued by their office, including those of a former agent, if applicable, for at least two (2) years. Transaction receipts are to be maintained in ascending receipt number order.

(~~13~~12) Agents must pay or account for all missing items identified by an inventory audit no later than thirty (30) days after billing ~~after an inventory audit~~.

(~~14~~13) ~~Tag agents~~ Agents shall not issue ~~tags,~~ license plates, registration decals, receipts, or any type of ~~documents either on credit or before the taxpayer pays the tax or fee due~~ document until payment of all applicable taxes and fees has been received in full.

(~~15~~14) Agents are required to maintain strict compliance with the Motor Vehicle Licensing and Registration Act and with the rules, regulations, fee schedule, and procedures as set forth in the Motor License Agents Manual of Procedure and instructional material periodically issued by the Tax Commission.

~~(16) No motor license agent shall enter into a lease or sublease, for use in a motor license agency or in the conduct of agency business, for any furniture, equipment, machinery, vehicles or other items from any entity in which the agent or any person related to the agent within the third degree by consanguinity or affinity has a financial interest.~~

~~(17) Motor license agents may, however, locate or continue to locate a motor license agency in a building owned by said agent or by a person related to the agent within the third degree by consanguinity or affinity. In such case, a copy of the lease agreement must be attached to the annual financial statement. The location of the motor license agency and any change thereto must be approved by the Oklahoma Tax Commission.~~

(~~16~~15) ~~Attendance by the motor license agent and selected employees at the annual motor license agent schools conducted by the Oklahoma Tax Commission is mandatory~~ Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Annual area schools conducted by the Commission are an important component in disseminating such instruction. Area school attendance is not mandatory, unless specifically mandated by the Commission, but is strongly encouraged.

(~~17~~16) Agents are required to post the ~~fee chart poster~~ Public Notice Fee Chart, in addition to any other required public notices provided by the Tax Commission, in a conspicuous location in the agency.

~~(18) Agents are required to post all public notice posters furnished by the Oklahoma Tax Commission in conspicuous locations in the agency.~~

(~~19~~17) All customers' checks are to be made payable to: Oklahoma Tax Commission. One of the following identifying numbers must be listed on the face of the check: drivers license number, Department of Public Safety identification number, or a Social Security number.

(18) Motor License Agents are authorized to perform additional duties as directed by the Tax Commission, in compliance with Oklahoma statutory guidelines.

PART 13. SPECIAL PROVISIONS FOR APPLICATION, QUALIFICATION, APPOINTMENT, AND AGENCY OPERATION APPLICABLE TO CERTAIN MOTOR LICENSE AGENTS AND AGENCIES

710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours

(a) The location of the applicant's agency shall not be within a three (3) mile radius of an existing agency unless the applicant assumes the location of an existing agency.

(b) No Motor License Agent shall select a location owned by a member of the Oklahoma Legislature or to any person related to a member of the Oklahoma Legislature within the third degree of consanguinity (by blood relation) or affinity (by marriage).

(c) The number of agency employees is to be determined by the Motor License Agent subject to the Oklahoma Tax Commission's approval.

(d) The Motor License Agent shall maintain adequate equipment to accommodate the employees of the agency and sufficient seating arrangements for the taxpayers as determined by the Oklahoma Tax Commission.

(e) The Oklahoma Tax Commission shall determine the amount of office space the Motor License Agent shall maintain to provide a working area for the employees which is separate from the waiting area of the public. However, the amount of such office space shall not be less than Eight Hundred (800) square feet.

(f) The Oklahoma Tax Commission shall determine the amount of public parking the Motor License Agent shall maintain. However, the number of parking spaces shall not be less than five (5) with at least one (1) space reserved for disabled persons.

(g) Motor License Agents shall be responsible for all costs incurred by the Tax Commission when relocating an existing agency. Such payment may be waived by the Tax Commission in case of emergency or unforeseen business conditions beyond the control of the agent.

[OAR Docket #05-729; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #05-740]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
710:65-1-2. Definitions [AMENDED]
710:65-1-7. Consumer/user defined; specific applications [AMENDED]
710:65-1-11. Rentals and leases of tangible personal property [AMENDED]
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4. Contents of monthly sales report [AMENDED]
710:65-3-9. Final sales tax return when business is discontinued [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-13. Vendors' responsibility - sales to contractors [AMENDED]
710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions [AMENDED]
Subchapter 9. Permits
710:65-9-8. Special event permits and reporting [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 5. ~~Aircraft; Boats and Motors; Motor Vehicles~~ Items Subject to Other Taxes [AMENDED]
710:65-13-30. Exemption for ~~airplanes, boats, boat motors, and motor vehicles, including low-speed electrical vehicles; excise tax in lieu of sales tax~~ the sale of tangible personal property subject to other taxes [AMENDED]
Part 7. Churches~~, and Charitable, Civic, and Social Organizations and Activities~~ [AMENDED]
710:65-13-34. Exemption for qualified museums [RENUMBERED to 710:65-13-334]
710:65-13-35. Limited exemption for organizations which sponsor and promote educational, charitable, and cultural events for disadvantaged children [AMENDED and RENUMBERED to 710:65-13-335]
710:65-13-36. Exemption for Disabled American Veterans, Department of Oklahoma, Inc. and subordinate chapters [RENUMBERED to 710:65-13-336]
710:65-13-37. Qualifications for "Meals on Wheels" exemption [RENUMBERED to 710:65-13-337]
710:65-13-38. Qualifications for "Older Americans Act" exemption [RENUMBERED to 710:65-13-338]
710:65-13-39. Qualifications for "Collection and Distribution Organization" exemption [RENUMBERED to 710:65-13-339]
710:65-13-41. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and the Campfire Girls and Boys [RENUMBERED to 710:65-13-341]
710:65-13-42. Qualifications for "Juvenile Rehabilitation" exemption [RENUMBERED to 710:65-13-342]
Part 23. Gas and Electricity
710:65-13-120. Sales tax exemption for residential use [AMENDED]
Part 25. Governmental Entities
710:65-13-130. Sales to and by the government; taxable and exempt transactions [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-169. Definitions [AMENDED]
710:65-13-171. Sales of prosthetic devices to individuals [AMENDED]
710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients [AMENDED]
Part 37. Sales for Resale
710:65-13-201. ~~Retail sales~~ Sales between related entities [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210. Exemption for public and private schools and institutions of higher education [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities [NEW]
710:65-13-330. Oklahoma City National Memorial and Museum [NEW]
710:65-13-331. Sales to veterans' organizations for museums and memorials [NEW]
710:65-13-332. Exemption for sale of tickets to collegiate athletic championship events [NEW]
710:65-13-333. Sales made in conjunction with public library construction [NEW]
710:65-13-334. Exemption for qualified museums [NEW]
710:65-13-335. Limited exemption for organizations which sponsor and promote educational, charitable, and cultural events for disadvantaged children [NEW]
710:65-13-336. Exemption for Disabled American Veterans, Department of Oklahoma, Inc. and subordinate chapters [NEW]
710:65-13-337. Qualifications for "Meals on Wheels" exemption [NEW]
710:65-13-338. Qualifications for "Older Americans Act" exemption [NEW]
710:65-13-339. Qualifications for "Collection and Distribution Organization" exemption [NEW]
710:65-13-340. Exemptions for volunteer fire departments [NEW]
710:65-13-341. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and the Campfire Girls and Boys [NEW]
710:65-13-342. Qualifications for "Juvenile Rehabilitation" exemption [NEW]
710:65-13-343. Exemption for qualified youth athletic teams [NEW]
Subchapter 19. Specific Applications and Examples
Part 1. "A"

710:65-19-5. Sales of alcoholic beverages~~ and tobacco products~~ [AMENDED]
710:65-19-11. Automotive transactions [AMENDED]
Part 5. "C"
710:65-19-56. Contractors and subcontractors [AMENDED]
710:65-19-59. Store coupons [AMENDED]
Part 29. "O"
710:65-19-241. Fractionation tanks (frac tanks) [REVOKED]
Part 31. "P"
710:65-19-261. Physicians and optometrists [AMENDED]
Part 39. "T"
710:65-19-329. Service relating to telecommunications and telecommunications equipment [AMENDED]
710:65-19-331. Prepaid telephone calling cards, telephone authorization numbers and recharges [AMENDED]
Part 41. "U"
710:65-19-341. Natural or artificial gas and electric utility services [AMENDED]
Part 43. "V"
710:65-19-351. Volunteer fire companies [REVOKED]

AUTHORITY:
68 O.S. §§ 203, 1354.18; Oklahoma Tax Commission

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Subchapter 13. Sales and Use Tax Exemptions
Part 5. Items Subject to Other Taxes
710:65-13-30. Exemption for the sale of tangible personal property subject to other taxes [AMENDED]
Subchapter 19. Specific Applications and Examples
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n/a

ANALYSIS:
As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Sales Tax rules have been made to implement recent legislation. All legislative references are to the 49th Legislature, 2nd Regular Session (2004).

Sections 710:65-1-7, 710:65-7-13, and 710:65-19-56, dealing with contractors, have been amended to reflect a new exemption for purchases of items necessary to carry out a public contract with the Oklahoma Ordinance Works Authority, the Durant Industrial Authority, and the Ardmore Development Authority, enacted by House Bill 2213 of the 49th Legislature, 2nd Regular Session. [**68:1356(10)**]

Section 710:65-7-15, dealing with vendor liability, has been amended for clarification and to reflect the exempt status of purchases made by volunteer fire departments, parent-teacher organizations and associations, and the organization which operates the Oklahoma City National Memorial and Museum. [SB 1121(7) and SB 1383(1)] [**68:1356.1 and 68:1356(46)**]

Section 710:65-9-8, dealing with special event permits, has been modified to reflect legislative changes enacted by HB 2421(2). [**68:1364.2**]

Part 7 of Subchapter 13 has been amended so as to limit its scope to "Churches" and a New Part 43, dealing with "Social, Charitable, and Civic Organizations" has been added. All exemption Sections not directly church-related have been moved (revoked and renumbered) to the New Part 43. Thus, Sections 710:65-13-34, 710:65-13-35, 710:65-13-36, 710:65-13-37, 710:65-13-38, 710:65-13-39, 710:65-13-41, and 710:65-13-42 have become 710:65-13-334, 710:65-13-335, 710:65-13-336, 710:65-13-337, 710:65-13-338, 710:65-13-339, 710:65-13-341, and 710:65-13-342. In addition, the language of Section 710:65-13-335 was amended to reflect that qualifying organizations must be *established for the purpose of sponsoring the events*. [**68:1356(24)**]

Finally, several New Sections have been added to Part 43 to reflect new statutory exemptions: Section 710:65-13-330, dealing with sales to, or by, the organization operating the Oklahoma City National Memorial and Museum, [SB 1383(1)] [**68:1356(46)**]; Section 710:65-13-331, dealing with sales of personal property or services to be used for constructing a memorial or museum by a 501(c)(3) veterans' organization, consisting solely of honorably discharged veterans, [SB1121(6)] [**68:1356(47)**]; Section 710:65-13-332, dealing with sales of tickets to certain championship collegiate athletic events, [SB1383(1)] [**68:1356(45)**]; Section 710:65-13-333, dealing with sales made in conjunction with public library construction, [SB1121(6)] [**68:1356(48)**]; Section 710:65-13-340, dealing with both sales made to certain volunteer fire departments, as well as certain fund-raising sales made by such departments, up to an annual limit of $15,000.00. [S.B. 1121(7)] [68:1356(10) and 68:1356.1] Existing Section 710:65-19-351, which advised that such fire departments were not exempt, has been revoked.

Existing Sections 710:65-13-120 and 710:65-19-341, dealing with the taxation of gas and electricity for residential use, have been amended to reflect the provisions of SB 1121(4), which removed associated delivery or transmission charges from the scope of the levy. [**68:1354**)]

Section 710:65-13-130, dealing with the exemption for sales to, and sales by, governmental entities, has been amended to reflect certain "reciprocity" provisions of HB2421(1). [**68:1356(47)**]

Section 710:65-13-169, setting out definitions for Part 31, dealing with medical exemptions, has been clarified and amended to conform to the provisions of SB1121(8),(9). [**68:1357(20), 1357.6**]

Section 710:65-13-171, dealing with sales of prosthetic devices to individuals, has been clarified and amended to conform to the provisions of SB1121(8),(9). [**68:1357(20)**]

Section 710:65-13-173, dealing with medical appliances, medical devices, and other medical equipment furnished to Medicare or Medicaid recipients, has been clarified and amended to conform to the provisions of SB1121(8),(9). [**68:1357(20)**]

Section 710:65-13-210, dealing with public schools, private schools, and institutions of higher education, has been amended to reflect new exemptions for sales used for public school construction, [SB1121(6)] [**68:1356(41)**]; and for sales to career technology student organizations under the Oklahoma Department of Career and Technology Education. HB2421(1) [**68:1356(48)**]

Section 710:65-19-329, dealing with services related to telecommunications, has been amended to reflect a specific exemption for labor charges associated with constructing, installing, moving, servicing, repair, or maintenance of cellular transmission towers used to transmit messages or images. [HB2335(1)] [**68:1354(A)(4)(a)(4)**]

Section 710:65-13-343 has been added to recognize the exemption for fund-raising sales made by qualifying organizations which sponsor youth athletic teams. [**68:1356(44)**] [**L.2002, c. 503 § 1**]

Section 710:65-19-241 has been revoked in conformity with statutory clarification of how "frac tanks" are to be taxed. [**68:1355(2); 68:2103(A)(2)(c); 47:1133(C**)] [S.B. 1504, §§ 1, 2]

Sections 710:65-1-2 and 710:65-13-201 have been amended to ensure that the term "retail sale" is used in conformity with the Streamlined Sales Tax agreement.

Several Sections were amended to clarify policy on issues that have arisen over the prior year or which were raised during the rulemaking period. Section 710:65-1-11 was amended to clarify the tax treatment of charges for damage waivers in rental or lease contracts. Section 710:65-3-9 was modified to clarify procedures when a business is discontinued and to conform to new statutory due dates. Section 710:65-19-5 was altered to clarify the tax treatment of body shops consistently with other automotive repair businesses. Section

710:65-19-261 was expanded to make specific reference to optometrists and physicians in keeping with policy on similar practitioners. And Section 710:65-19-331 was altered to clarify policy on the sale of prepaid phone cards by retailers and conform to the sourcing rules under the Streamlined Sales Tax Act.

Sections 710:65-13-30 and 710:19-11 were amended to reflect the removal of cigarettes and tobacco products from the levy of sales tax, in keeping with State Question 713. [**68:1355(11)**] [H.B. 2660(12)] Additionally, Section 65-13-30 was amended to reflect the provisions of HB 1889(3), which created an exemption for sales of charity game equipment made to a veterans' organization. This Section was also was updated to reflect the exemption for items of charity game equipment purchased by an organization licensed to conduct charity games if the charity games tax has been paid. [HB1889(3)] [**68:1355**] and similar statutory exemptions set out in 68 O.S. 1355.

Sections 710:65-3-4 and 710:65-19-59 have been amended to cure scrivener's errors and improve readability.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-2. Definitions

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

"Business" means any activity with the potential to generate a profit even if the business actually operates at a loss. This category also includes non-profit, religious and other organizations and persons who are otherwise exempt when they are conducting activities for a profit in competition with other businesses.

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

"Consideration" means and includes, but is not limited to:

(A) The price arrived at between purchaser and vendor.

(B) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(C) No deduction from gross receipts is permitted for services performed or work done on behalf of the vendor prior to transfer of such tangible personal property. [**See:** 68 O.S. § 1352(11)]

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. **"Delivery charges"** does not include charges for the delivery of **"direct mail"** if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

"Gross receipts", ***"gross proceeds"***, or ***"sales price"*** *means the total amount of consideration including cash, credit, property, and services, for which personal property or services are sold, leased, or rented; valued in money, whether received in money or otherwise, without any deduction for the following:*

(A) *The seller's cost of the property sold;*

(B) *The cost of materials used, labor, or service cost;*

(C) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*

(D) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

(E) *Delivery charges and installation charges, unless separately stated on the invoice, billing, or similar document given to the purchaser; or,*

(F) *The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.*

"Gross receipts",***"gross proceeds"***, or ***"sales price"*** *shall not include:*

(A) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*

(B) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or*

(C) *Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.* [68 O.S.Supp.2003, § 1352(11)]

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) **"Lease or rental"** does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of One Hundred Dollars or one (1) percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform

as designed. For the purpose of this unit, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) **"Lease or rental"** does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined by 26 U.S.C. § 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provisions of federal, state, or local law.

"Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

"Sale" means, for the purpose of this Chapter, transfer of title or possession of tangible personal property for consideration. All consideration received for the sale is included in gross receipts subject to tax. **"Sale"** does not include sale and leaseback. [**See:** 710:65-1-11(b)]

"Sales tax" means all applicable state, city and county sales tax.

"Sales value" means:

(A) In the case of a manufacturer, the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing; or

(B) In the case of a person holding a mixed beverage tax permit or other permit issued in accordance with 37 O.S. § 577, the total retail sales price for sales of alcoholic beverages only, calculated pursuant to *OAC* 710:20-5-4; or

(C) In the case of sales of prepared food, the sales value of a free, reduced price, or complimentary meal is presumed to be the greater of the consideration received for the meal, if any, or the cost paid by the vendor of the food for the food items included in the free, reduced price, or complimentary meal; or

(D) In the case where an inventory of goods, originally purchased exempt for resale, is being held for rental or leasing purposes, the regular rental charges which would be charged to the vendor's best customer, if the goods are to be returned to inventory. Where the goods are not to be returned to inventory held for rental or leasing purposes, the lesser of the original purchase price of the goods, or the current market price will be presumed to be the sales value; or

(E) Otherwise, **"sales value"** means the larger of either the vendor's cost at the time the exempt purchase of goods was made, or the price at which it would be sold to the vendor's best customer in the ordinary course of business.

"Tangible personal property" means *personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. For purposes of the Oklahoma Sales Tax Code,* ***"tangible personal property"*** *includes electricity, water, gas, steam and prewritten computer software.* [68 O.S.Supp.2003, § 1352(23)] The term does not include real property, such as land and buildings, tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, or tangible personal property which is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property. **"Tangible personal property"** does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit, or uncancelled United States postage or revenue stamps sold for postage or revenue purposes. [**See:** 68 O.S. § 1352; 68 O.S. § 1354; See Also: 60 O.S. §§ 7,8]

"Tax" means all state, applicable city and applicable county tax.

"Use tax" means all applicable state and city use tax.

"User" or **"consumer"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

710:65-1-7. Consumer/user defined; specific applications

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, ~~except those operated by the Federal Government, the State, or a political subdivision thereof,~~ including those owned or operated by churches, fraternities, cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its **"sales value"**, as defined in *OAC* 710:65-1-2. The business withdrawing tangible personal property from inventory should include the **"sales value"** of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [**See:** 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the Oklahoma Department of Veterans Affairs, may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [**See:** 68 O.S. § 1352]

710:65-1-11. Rentals and leases of tangible personal property

(a) **Rental or lease of tangible personal property taxable.** The gross receipts or gross proceeds derived from the rental or lease of tangible personal property are subject to sales tax.

(b) **"Rental" or "lease" defined. "Lease"** or **"rental"**, as used in this Section, shall have the same meaning as set out in 710:65-1-2.

(c) **Computation of the tax.** The tax shall be computed on the gross amount without any allowance for service, laundering, cleaning, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee. However, if the rental or lease charge is based on the retail value of the property at the time of entering the lease agreement and the life expectancy of the property, and the rental charge is separately stated from the service in the bill or invoice delivered to the lessee, tax shall be due only on the rental amount.

(d) **Taxability of vendor payments for insurance and property taxes.** The tax must be computed on the gross amounts of any charges billed to the purchaser to reimburse the vendor for insurance premiums or for property taxes paid.

(e) **Taxability of charges for damage waivers.** An optional charge for a damage waiver or a similar instrument that acts as a waiver of the lessor's right to collect from the lessee for any damage to the property is not considered part of the gross lease or rental charge, if separately stated.

(~~e~~f) **Payment of tax by a contractor or lessor on equipment subsequently leased or rented.** Payment of a sales or use tax by a contractor or other lessor on equipment purchased for his/her own use and so used does not exempt subsequent rentals or leasing of the equipment from the sales tax.

(~~f~~g) **Furnishing equipment with an operator.** The furnishing for a charge of equipment with an operator shall be considered a service and not subject to sales tax. Persons purchasing equipment for the purpose of furnishing said equipment with an operator must pay sales or use tax at the time the equipment is purchased.

(~~g~~h) **Purchases by a vendor for renting or leasing.** Purchases by a vendor of tangible personal property for purposes of renting or leasing same are exempt from sales tax.

If such equipment purchased exempt from taxation is rented with an operator or the vendor uses such equipment to perform a service, but the equipment remains in the rental inventory, the vendor should pay sales tax on the **"sales value"**, pursuant to *OAC* 710:65-1-2.

(~~h~~i) **Purchases of repair parts.** Purchases of repair parts made by a vendor who is engaged in renting or leasing tangible personal property, where the parts are to be incorporated into the tangible personal property subsequently rented or leased, are considered purchases for resale and may be purchased exempt from sales tax. Items such as oil, filters, and the like, which are purchased by the lessor, and are incorporated into the property transferred to the lessee, whether as part of the rental or lease agreement, or as separately billed items, are also included in the exemption described in this subsection.

(~~i~~j) **Time of incidence of tax on leases.**

(1) A lease of tangible personal property is a series of transactions in time units defined by the agreement of the parties. Gross receipts generated therefrom are taxable at the rate in effect at the time the payment must be or is made. The initial obligation to pay becomes fixed upon the transfer of possession of the tangible personal property unless the agreement specifically sets forth another time. Subsequent obligations to pay become fixed either by the terms of the agreement, trade practices of the lessor, or practice in a course of dealing.

(2) A lease of tangible personal property normally imposes upon the lessee multiple obligations. Each of these obligations may be treated separately by the agreement. The incidence of taxation upon each payment under the agreement will be determined by the obligation for which payment is made and the time at which such obligation to pay in fact arose.

(3) Some obligations to pay arise by the execution of an agreement while other obligations arise by reason of the voluntary activities of the parties during the term of the agreement. For example, the lease of an automobile for a fixed period of months may give rise to an unconditional obligation to pay a minimum monthly amount and an additional obligation to pay for all miles driven in excess of a specified amount. [**See:** 68 O.S. §§1352, 1354]

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The **"sales value"** of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

(5) The balance of tax due less any remuneration earned, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(6) Such other reasonable information as the Commission may require. [**See:** 68 O.S. §§1365, 1367]

(b) **Remuneration.** When the sales tax report is timely filed, the vendor may deduct the applicable remuneration as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files his report after the date of delinquency or fails to make full payment on or before the due date.

(1) If the vendor is participating in the Commission's electronic funds transfer and electronic data interchange program, the applicable remuneration is two and one-fourth ($2\frac{1}{4}$) percent of the tax due.

(2) For all other vendors, the remuneration allowed shall be one and one-fourth ($1\frac{1}{4}$) percent of the tax due.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Electronic Filing Coordinator, Oklahoma Tax Commission, P.O. Box 53374, Oklahoma City, OK, 73152-3374, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of two and one-fourth ($2\frac{1}{4}$) percent.

(1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access; and,

(C) The taxpayer is unable to use the Telefile system.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC* 710:1-5-21 through 710:1-5-48, the rules of practice and procedure before the Commission.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**

710:65-3-9. Final sales tax return when business is discontinued

~~Notwithstanding any other provision in this Chapter concerning the time within which a vendor must file a sales tax return, a vendor who is ceasing the business for which the sales tax permit was issued, must file a final return with the Commission within twenty (20) days after discontinuing such business and submit his sales tax permit.~~ A vendor who ceases doing business shall so indicate on the final sales tax report for the discontinued business, and surrender the sales tax permit to the Commission for cancellation, together with a remittance for any unpaid or accrued taxes. Reporting and remitting for the final business period shall be done in the manner prescribed and by the applicable date set out in 68 O.S. § 1365, or by the twentieth day of the month following the discontinuance of the business, whichever is earlier. [**See:** 68 O.S. §§ 1364, 1365]

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-13. Vendors' responsibility - sales to contractors

(a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.

(b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the Oklahoma Department of Veterans Affairs, may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [**See:** 68 O.S. 1356(38)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant

to subsections (b)(1), (b)(2), or (b)(3) of this Section, the vendor must obtain:

(1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this subsection;

(2) Documentation indicating the contractual relationship between the contractor and the entity; and,

(3) Certification, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions

(a) **Sales to entities with other specific statutory exemptions.** In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this subsection:

(1) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and

(2) A signed statement that the purchase is **authorized by, and being made by,** the exempt entity, with funds of the exempt entity, and **not** by the individual; and,

(3) In the case of sales to **fire departments organized for unincorporated areas**, as defined in 18 O.S. § 592, certification on the face of the invoice or sales ticket is also required.

(4) In the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program, no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction.

(b) **Examples and applications.** Types of entities which may receive letters or cards, certifying or confirming a specific statutory exemption include:

(1) **Churches**;

(2) **Youth camps**, **supported or sponsored by** one or more **churches**, members of which serve as trustees of the organization;

(3) **Children's homes** where church members are trustees or where the home is on church-owned land or where 50% of the juveniles are court-adjudicated and the home receives less than 10% of its funding from state funds;

(4) **Council organizations** of the Boy Scouts and Girl Scouts of America or the Campfire Boys and Girls;

(5) **Public schools**;

(6) Oklahoma System of **Higher Education**;

(7) **Private schools** registered with the State Department of Education and private institutions of higher education accredited by the Oklahoma State Board of Regents for Higher Education;

(8) **Federal governmental** units, institutions, and instrumentalities;

(9) **Governmental entities** of the State of Oklahoma, including county and local units;

(10) City and county **trust authorities**;

(11) Federally chartered **credit unions**;

(12) **Rural water districts**;

(13) Facilities engaged in the remediation or processing to ameliorate **hazardous wastes**;

(14) **Disabled American Veterans** Department of Oklahoma and its subordinate chapters;

(15) **Museums** which are members of the American Museum Association;

(16) **Rural Electric Cooperatives**;

(17) Federally qualified **health care** facilities;

(18) **Health care** facilities receiving reimbursement from the Indigent Care Revolving Fund;

(19) **Community based health centers** providing primary care services at no cost to the patient;

(20) **Cultural organizations** established to sponsor and promote educational, charitable, and **cultural events for disadvantaged children**;

(21) Federally recognized **Indian Tribes**;

(22) Leases or lease-purchases of tangible personal property or services to **municipalities, counties, or school districts**;

(23) Sales of tangible personal property or services **to**, or **by**, a tax-exempt [26 U.S.C. § 501(c)(3)] organization, which is organized primarily to provide education and to conduct events related to **teacher training in robotics**, and affiliated with a comprehensive University within the Oklahoma System of Higher Education; ~~and,~~

(24) Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a **national championship sports event**, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i);

(25) Volunteer fire departments organized pursuant to 18 O.S. § 592;

(26) Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code;

(27) The non-profit organization which operates the Oklahoma City National Memorial and Museum; and,

(28) The first Fifteen Thousand Dollars ($15,000.00) of sales of tangible personal property sold for fund raising purposes by a youth athletic team which is part of an athletic organization exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(4).

SUBCHAPTER 9. PERMITS

710:65-9-8. Special event permits and reporting

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

(1) **"An event held on an irregular basis"**, for purposes of this Section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "an

irregular basis" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.

(2) ***"Person"*** *means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.* [68 O.S. § 1352(12)]

(3) ***"Promoter"*** *or* ***"organizer"*** *means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes by special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(4) ***"Special event"*** *means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold.* ***"Special event"*** *shall include, but not be limited to gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits.* ***"Special event"*** *shall not include any county, district or state fair or public or private school or university-sponsored event.* ***"Special event"*** *shall not include an event sponsored by a city or town that includes less than ten special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(5) ***"Special event vendor"*** *means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes at a special event within this state and who is not permitted under Section 1364 of Title 68 of the Oklahoma Statutes.* [68 O.S.Supp.2003 § 1364.2]

(b) **Application for special event permit.** Every promoter or organizer of a special event shall file an application for a special event permit with the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City OK 73194, at least 20 days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one application, and a separate permit will be issued for each event. Each permit will include the dates of the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events.

(c) **Fee.** There is a fee of fifty dollars ($50.00) for each application filed, which must be remitted with the application.

(d) **Promoter or organizer to distribute vendors' reporting forms.** Special event promoters and organizations are required to provide ~~Special Event Vendors Reporting Forms to the non-permitted vendors~~ sales tax report forms to special event vendors that will be selling tangible personal property and taxable services at the event.

(e) **Promoter or organizer to collect reports and tax from special event vendors.** ~~Special~~ At the end of the event, special event promoters are required to collect the ~~Special Event Vendors Reporting Forms daily,~~ sales tax reports, along with the sales tax due from each special event vendor.

(f) **Promoter or organizer to report and remit sales tax.** Promoters or organizers of special events must file sales tax reports and remit taxes collected from special events, as follows:

(1) Promoters and organizers are required to file ~~a~~ the sales tax ~~report~~ reports within fifteen days following the last day of a special event. ~~The sales tax report is to be accompanied by the Special Event Vendors Reporting Forms;~~

(2) Payment of the total tax due is required at the time the sales tax report is filed. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed; and,

(3) The organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 O.S. § 1364. The list shall include the vendor's name, address, telephone number, and sales tax permit number.

(4) Promoters and organizers are only liable for the failure to report and remit the sales taxes that have been collected by them from special event vendors.

(g) **Limitation of responsibilities of promoters or organizers.** Promoters or organizers of a special event that is held on an annual basis during the same thirty-day period each year may request that the Tax Commission limit their responsibilities to the following:

(1) Submitting of an application for a special event permit as provided in subsection A of this section;

(2) Providing report forms to special event vendors as provided in subsection C of this section; and,

(3) Within fifteen (15) days following the conclusion of the special event, submitting a list of special event vendors at each event, including the vendor's name, address, and telephone number.

(h) **Denial of limitation.** Requests submitted pursuant to (g) of this Section may be denied by the Tax Commission for reasons including, but not limited to, failure by the promoter to comply with the requirements of this section or failure by vendors of the promoter's previous special events to comply with the provisions of (i) of this Section.

(i) **Vendor reporting and remitting pursuant to subsection (g).** A special event vendor who has participated in a special event approved under subsection (g) shall remit the tax along with a sales tax report directly to the Tax Commission within fifteen (15) days following the conclusion of the special

event. Sales taxes shall be considered delinquent and interest as provided by law will be charged if payment is not received or postmarked by the fifteenth (15th) day following the event.

(~~g~~j) **Reporting and remitting tax when event lasts 30 days or longer.** When the special event will last thirty (30) days or longer, a sales tax report is required to be filed for each calendar month by the 15th day of the following month.

(~~h~~k) **Remuneration.** Provided that the required sales tax reports are timely filed and the tax due remitted, promoters and organizers to whom special event permits have been issued may deduct the applicable remuneration allowed by 68 O.S. § 1367.1.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 5. ~~AIRCRAFT; BOATS AND MOTORS; MOTOR VEHICLES~~ ITEMS SUBJECT TO OTHER TAXES

710:65-13-30. Exemption for ~~airplanes, boats, boat motors, and motor vehicles, including low-speed electrical vehicles; excise tax in lieu of sales tax~~ the sale of tangible personal property subject to other taxes

(a) **Aircraft, boats, boat motors, and motor vehicles, including low-speed electrical vehicles.** Sales and use tax does not apply to the sale of airplanes, boats, boat motors, and motor vehicles, including low-speed electrical vehicles, which are subject to the "Oklahoma Aircraft Excise Tax Act" [**See:** 68 O.S. § 6002], the "Oklahoma Vessel and Motor Registration Act" [**See:** 63 O.S. § 4107], or the "Oklahoma Vehicle Excise Tax Act" [**See:** 68 O.S. § 2106].

~~(b) The~~ These excise taxes ~~noted in (a) of this Section~~ are levied on all aircraft, small vessels, watercraft, sailboats, motors greater than ten (10) horsepower, motorboats, or motor vehicles, including low-speed electrical vehicles, and also the optional equipment and accessories attached at the time of the sale and included in the purchase price or manufacturer statement of origin.

(~~c~~b) **Accessories, optional equipment, and parts.** Sales tax is due on accessories, optional equipment, or parts which are not attached and sold as part of the purchase price on the sale of aircraft, motors greater than ten (10) horsepower, vessels, motorboats, motor vehicles and low-speed electrical vehicles.

(~~d~~c) **Boats motors.** The sale of boat motors in excess of ten (10) horsepower is subject to boat and motor excise tax. [**See:** 63 O.S. §§ 4003(B)(1), 4107] The sale of boat motors ten (10) horsepower or less is subject to sales/use tax. [**See:** 68 O.S. § 1355]

(~~e~~d) **Leases of aircraft.** Leases of aircraft are not subject to sales tax if either the aircraft excise tax has been paid on the lease transaction or an exemption applies to the transfer from the lessor to the lessee, pursuant to 68 O.S.Supp.2000, §§ 1355(9) and 6001(4).

(e) **Sales of crude petroleum, natural or casinghead gas, and other products.** *Sales of crude petroleum, natural or casinghead gas, and other products subject to gross production tax pursuant to 68 O.S. § 1001 et seq. and 68 O.S. §1101 et seq. are not subject to sales tax. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas.* [See: 68 O.S. § 1355(3)]

(f) **Sales from coin-operated vending devices.** Sales from coin-operated vending devices on which the fee imposed by 68 O.S. §§ 1501-1512 has been paid are not subject to sales tax.

(g) **Sales of charity game equipment.** Sales of charity game equipment on which a tax is paid pursuant to the Oklahoma Charity Games Act, (3A O.S. § 401 et seq.), or which is sold to a veterans' organization exempt from taxation pursuant to the provisions of Section 501(c)(4),(7),(8),(10), or (19) of the Internal Revenue Code are not subject to sales tax.

(h) **Sales of cigarettes and tobacco products.** Sales of cigarettes and tobacco products are exempt from sales tax in the following instances:

(1) Sales to a federally-recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of 68 O.S. § 346(C) or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid;

(2) Sales to a federally-recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied by 68 O.S. § 349 or 426 has been paid; or,

(3) From and after January 1, 2005, sales of cigarettes on which the tax levied in 68 O.S. § 301 et seq. or tobacco products on which the tax levied in 68 O.S. § 401 et seq. has been paid. [**See: 68 O.S. § 1355(11)**]

PART 7. CHURCHES~~, AND CHARITABLE, CIVIC, AND SOCIAL ORGANIZATIONS AND ACTIVITIES~~

710:65-13-34. Exemption for qualified museums [RENUMBERED TO 710:65-13-334]

~~(a) **General provisions.** Museums or other entities accredited by the American Association of Museums are exempt from the levy of sales tax on their purchases of tangible personal property and services, and provided that the museum is in compliance with (d)(2) of this Section, on the sales of tickets for admission.~~

~~(b) **Certification required for purchases.** Certification, in which the name of the museum or other accredited entity is set out on the face of the invoice or sales receipt to be obtained and retained by the vendor, is required of persons making purchases on behalf of a qualifying museum or other accredited entity, in order to support the exemption pursuant to *OAC* 710:65-3-30 and 710:65-3-33.~~

~~(c) **Application procedure.** Application for the exemption on purchases shall be made to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the~~

~~exempt status can be issued, the information described in this subsection must be submitted:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address:~~

~~(4) Federal employer's identification number, and~~

~~(5) Written confirmation that the applicant is currently accredited by the American Association of Museums.~~

~~(d) **Exemption limited to eligible, properly-documented transactions.**~~

~~(1) Only those purchases actually purchased by the museum or other accredited entity, invoiced to the museum or entity, and paid for by funds or check directly from the museum or other accredited entity, will qualify for the exemption on purchases.~~

~~(2) To qualify for the exemption on sales of admission tickets, the museum must separately state an amount equivalent to the tax which would otherwise have been required to be collected on face of the admission ticket and must use the amount so stated and so collected solely for the purpose of servicing debt incurred by the museum in the construction, enlargement, or renovation of facilities used or to be used for the entertainment, edification, or cultural cultivation of persons admitted to the museum or facility. The museum or other accredited entity must maintain records adequate to show that the proper amount was collected in lieu of the tax and that those funds were used for purposes of servicing qualifying projects.~~

~~(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to museums and other accredited entities.~~

710:65-13-35. Limited exemption for organizations which sponsor and promote educational, charitable, and cultural events for disadvantaged children [AMENDED AND RENUMBERED TO 710:65-13-335]

~~(a) **Qualification for educational, charitable, and cultural events for disadvantaged children exemption.** Effective July 1, 1996, the first $15,000.00 of each calendar year's sales, to or by, organizations which sponsor or promote educational, charitable, or cultural events for disadvantaged children, are exempt from sales tax.~~

~~(b) **Application process.** Application must be in the form of a letter requesting recognition which should provide the legal name of the entity seeking exemption, a current mailing address, the entity's federal employer's identification number, and the supporting documentation described in subsection (c).~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:~~

~~(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3); and~~

~~(2 A written description of the activities of the organization, as may be evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By-laws;~~

~~(C) Brochure; and~~

~~(D) Notarized letter from the President or Chairman of the organization.~~

~~(d) **Exemption limited to eligible, properly-documented transactions.** Only the first $15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.~~

~~(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.~~

710:65-13-36. Exemption for Disabled American Veterans, Department of Oklahoma, Inc. and subordinate chapters [RENUMBERED TO 710:65-13-336]

~~(a) **General provisions.** Disabled American Veterans, Department of Oklahoma, Inc. and its subordinate chapters are exempt from the levy of sales tax on purchases of tangible personal property and services.~~

~~(b) **Application procedure.** Application for exemption shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address:~~

~~(4) Federal employer's identification number, and~~

~~(5) Written confirmation that the applicant is a currently recognized chapter of the Disabled American Veterans, Department of Oklahoma, Inc.~~

710:65-13-37. Qualifications for "Meals on Wheels" exemption [RENUMBERED TO 710:65-13-337]

~~(a) **Qualification for Meals on Wheels exemption.** Sales tax does not apply to the sale of food, food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S.Supp.1993. §1357(11)(a), and which are commonly referred to as "Meals on Wheels," "Mobile Meals," and the like.~~

~~(b) **Application process.** Application shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4 federal employer's identification number; and~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:~~

~~(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3); AND~~

~~(2) A written description stating the activities of the organization, as evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By-laws;~~

~~(C Brochure; or~~

~~(D) Notarized letter from the President or Chairman of the organization.~~

~~(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food or food products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.~~

~~(e) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for "Meals on Wheels," "Mobile Meals," and similar programs enumerated in 68 O.S.Supp.1993, §1357(11)(a), may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to "Meals on Wheels" and similar programs.~~

710:65-13-38. Qualifications for "Older Americans Act" exemption [RENUMBERED TO 710:65-13-338]

~~(a) **Qualification for the Older Americans Act exemption.** Sales tax does not apply to the sale of food or food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S.Supp.1993, §1357(11)(b), and which receive federal funding pursuant to the Older Americans Act of 1965, for purposes of providing nutrition programs for the care and benefit of elderly persons.~~

~~(b) **Application process.** Application shall be made on forms provided by the Commission.~~

~~Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:~~

~~(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3);~~

~~(2) A written description stating the activities of the organization, as evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By-laws;~~

~~(C) Brochure; or~~

~~(D) Notarized letter from the President or Chairman of the organization; AND~~

~~(3) Copy of notification letter approving the organization for funding under the Older Americans Act of 1965.~~

~~(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food or food products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.~~

~~(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for "Older Americans Act" organizations, enumerated in 68 O.S. Supp. 1993, §1357(11)(b), may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to "Older Americans Act" organizations.~~

710:65-13-39. Qualifications for "Collection and Distribution Organization" exemption [RENUMBERED TO 710:65-13-339]

~~(a) **Qualification for Collection and Distribution Organization exemption.** Effective May 26, 1993, sales tax does not apply to the sale of tangible personal property to or by organizations enumerated in 68 O.S.Supp.1993, §1357(12), and which are primarily involved in the collection and distribution of food and household products to other organizations that are exempt from taxation pursuant to 26 U.S.C. §501(c)(3).~~

~~(b) **Application process.** Application shall be made on forms provided by the Commission.~~

~~Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:~~

~~(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3);~~

~~(2) A written description stating the activities of the organization, as evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By laws;~~

~~(C) Brochure; or~~

~~(D) Notarized letter from the President or Chairman of the organization; and~~

~~(3) List of organizations, including federal employee identification numbers, to which items were distributed for the previous calendar year.~~

~~(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food, food products, and household products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.~~

~~(e) **Other limitations.** The exemption set out in this Section does not apply to sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business.~~

~~(f) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352 are taxable to the contractor. A contractor who performs improvements to real property for a "Collection and Distribution" organization, enumerated in 68 O.S.Supp.1993, §1357(12) may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a "Collection and Distribution" organization.~~

710:65-13-41. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and the Campfire Girls and Boys [RENUMBERED TO 710:65-13-341]

~~(a) **General provisions.** Council and state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and the Campfire Girls and Boys are exempt from the levy of sales tax on purchases of tangible personal property and services. **Dens**, **packs**, **troops**, or similar groups affiliated with a council or state supervisory organization of the Boy Scouts of America, Girl Scouts of U.S.A., or the Campfire Girls and Boys are not included within the scope of the exemption described in this Section.~~

~~(b) **Application procedure.** Application for exemption shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address:~~

~~(4) Federal employer's identification number, and~~

~~(5) A determination letter or group ruling from the Internal Revenue Service.~~

710:65-13-42. Qualifications for "Juvenile Rehabilitation" exemption [RENUMBERED TO 710:65-13-342]

~~(a) **Qualification for the Juvenile Rehabilitation exemption.** Effective July 1, 1996, sales tax does not apply to the sale of goods or services to organizations which take court adjudicated juveniles for purposes of rehabilitation and which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). However, at least fifty percent (50%) of the juveniles served by the organization must be court adjudicated and the organization must receive state funds in an amount which is less than ten percent (10%) of the annual budget of the organization.~~

~~(b) **Application process.** Application shall be made by letter, addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and~~

~~(5) Name(s) and current mailing address(es) of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:~~

~~(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3);~~

~~(2) A written description stating the activities of the organization, as evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By laws;~~

~~(C) Brochure; or~~

~~(D) Notarized letter from the President or Chairman of the organization which states the services provided by the organization; AND~~

~~(3) A copy of the last audit, income tax informational return or other financial statements which will show that for the last fiscal year end before application, that less than 10% of the budget of the organization were from state funds.~~

~~(4) A statement signed by a responsible officer of the organization that sets out the percentage of juveniles served which were court-adjudicated during the last fiscal year, giving the total number served, and the total number of those that were court-adjudicated.~~

~~(d) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.~~

~~(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for "Juvenile Rehabilitation" organizations may **not** purchase the tangible personal property or services used to perform the contract exempt from sales tax under the exemption provided by statute to "Juvenile Rehabilitation" organizations.~~

PART 23. GAS AND ELECTRICITY

710:65-13-120. Sales tax exemption for residential use

(a) **Definition.** The sale of natural or artificial gas and electricity, ~~along with associated delivery or transmission services,~~ when sold exclusively for residential use is exempt from state sales tax, but remains subject to any applicable municipal and county sales taxes in effect at the time of sale. The term **"residential use"** means the use of gas or electricity by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning, in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, or townhouse used exclusively for domestic purposes. Residential use includes service to buildings appurtenant to the residence, including garages, barns, and other minor buildings, for use of the residents served through the residential meter. Residential use does not include use in travel trailers, motor homes or other recreational vehicles.

(b) **Private homes or individual living units.** Users in a private home or individual living unit, such as apartments, condominiums and townhomes, who are served through a single meter and whose rate has been classified by statute or regulations as residential are automatically exempt.

(c) **Multiple unit dwellings.** Users in multi-unit apartments, mobile trailer home parks or condominium and townhouse associations who are billed through a master meter, i.e. a single meter for the entire complex, and are taking service under a commercial rate may nevertheless qualify for this exemption providing the gas or electricity is used exclusively for residential use as defined in (a) of this Section. [**See:** 68 O.S.Supp.2003, § 1357(6); 68 O.S.Supp.2004, § 1354]

PART 25. GOVERNMENTAL ENTITIES

710:65-13-130. Sales to and by the government; taxable and exempt transactions

(a) **Sales "to" governmental entities.** Sales of tangible personal property or services to this State, its institutions or political subdivisions, and to the United States, including its agencies and instrumentalities are exempt from sales tax. Sales to other states' governments, political subdivisions, institutions, or agencies are not exempt, unless the state is one which borders Oklahoma and grants a like exemption from taxes on similar sales of items to Oklahoma or its political subdivisions.

(1) **Records required.** The books and records of the vendor must show that the purchase was billed to and paid by the government agency.

(2) **Sales to government employees.** Sales to individuals who are employees of this State, its institutions and subdivisions, or of the United States government, are not exempt from tax unless the sale is billed directly to the appropriate government agency or the purchase is by means of properly completed government purchase order or credit card. Sales made on credit cards bearing an employee's name and the name of the government agency for which the employee works will qualify for exemption only if the card is issued to the Federal Government, rather than to the individual, and is paid directly by the Federal Government. The credit cards that currently meet this criteria are those issued through the GSA SmartPay card program:

(A) **Fleet cards.** All Federal Government **fleet cards** are centrally-billed. This means that all charges are billed directly to the Federal Government and paid directly by the Federal Government. Charges made using an authorized **fleet card** are therefore, exempt from the levy of Oklahoma sales tax. Authorized **fleet cards** must meet all the requirements set out in this paragraph:

(i) The **fleet card** prefix (first 4 digits) must be 8699 or 5568;

(ii) The **fleet card** platform must be Voyager or MasterCard; and

(iii) The Voyager **fleet card** must be issued by Citibank, NationsBank, or U.S.Bank; the MasterCard **fleet card** must be issued by Citibank, First National Bank of Chicago, NationsBank, or U.S.Bank.

(B) **Purchase cards.** All Federal Government **purchase cards** are centrally-billed. This means that all charges are billed directly to the Federal Government and paid directly by the Federal Government. Charges made using an authorized **purchase card** are therefore, exempt from the levy of Oklahoma sales tax. Authorized **purchase cards** must meet all the requirement set out in this paragraph:

(i) The **purchase card** prefix (first 4 digits) must be 4486, 4716, or 5568;

(ii) The **purchase card** platform must be Visa or MasterCard; and

(iii) The Visa **purchase card** must be issued by Citibank, NationsBank, or U.S.Bank; The MasterCard **purchase card** must be issued by Citibank, First National Bank of Chicago, NationsBank, Mellon Bank, or U.S.Bank.

(C) **Travel cards.** Federal Government **travel cards** may be centrally-billed or individually billed. Individually-billed charges are billed to and paid by the federal **employee**, and then reimbursed by the Federal Government. Individually-billed charges made using a **travel card** are **subject to** the levy of Oklahoma sales tax. Only centrally-billed charges made using an authorized **travel card**, because they are billed directly to and paid directly by the Federal Government, are exempt from the levy of Oklahoma sales tax. Authorized **travel cards** must meet all the requirements set out in this paragraph:

(i) The **travel card** prefix (1st four (4) digits) must by 4486 or 4716, or 5568;

(ii) The sixth (6th) digit of the account numbering structure will denote whether the travel card is centrally-billed or individually-billed:

(I) A sixth digit of 0, 6, 7, 8, or 9 denotes that the **travel card** is centrally-billed;

(II) A sixth digit of 1, 2, 3, or 4 indicates that the **travel card** is individually-billed;

(iii) The **travel card** platform must be Visa or MasterCard; and

(iv) The **travel card**, whether Visa or MasterCard, must be issued by Citibank, First National Bank of Chicago, NationsBank, or U.S.Bank.

(D) **Integrated cards.** Federal Government **integrated cards** may include **fleet**, **travel**, or **purchase card** functionality and offer the Federal Government a single card for all purchases. All **fleet and purchase type transactions** made on an **integrated card** are centrally-billed, and therefore exempt from the levy of Oklahoma sales tax, regardless of the sixth digit on the card. **Travel card** type functionality may be centrally-billed or individually-billed. Authorized **integrated cards** must meet all the requirements set out in this paragraph:

(i) The prefix (first four (4) digits) of an **integrated card** must be 4486, 4716, or 5568;

(ii) For travel functionality **only**, the sixth digit of the **integrated card** will denote whether the card is centrally or individually billed:

(I) A sixth digit of 0, 6, 7, 8, or 9 denotes that the **integrated card** being used for travel functionality is centrally-billed;

(II) A sixth digit of 1, 2, 3, or 4 indicates that the **integrated card** being used for travel functionality is individually-billed;

(iii) The **integrated card** platform must be Visa or MasterCard; and

(iv) The **integrated card**, whether Visa or MasterCard, must be issued by Citibank, First National Bank of Chicago, NationsBank, or U.S.Bank; and

(3) **Sale to contractors.** Sales to contractors in connection with the performance of any contract with the United States government are not exempt unless the ownership and possession of the property purchased by the contractor or agent transfers immediately to the United States government. [**See:** 68 O.S. §§1356(1), 1356(2)]

(b) **Sales by a lease or lease-purchase agreement with a municipality or county.** As of July 1, 1999, the sale of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district is exempt from sales tax.

(c) **Sales "by" governmental entities.** Except as specifically exempt by statute, the State of Oklahoma, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, shall collect, report and remit sales tax on taxable sales of tangible personal property and services. For example, sales of city maps, sales of gifts and souvenirs, sales of food from city operated concessions at stadiums, ballparks, auditoriums, etc., are subject to tax.

(d) **Purchases by contractors.** Except where specifically authorized by statute, purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for a governmental entity may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a governmental entity.

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-169. Definitions

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

"Drug" *means a compound, substance or preparation, and any component of a compound, substance or preparation:*

(A) *Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;*

(B) *Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or,*

(C) *Intended to affect the structure or any function of the body.* [68 O.S.Supp.2003, § 1352(7)]

"Durable medical equipment" means equipment, *including repair and replacement parts for same,* which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, *is not worn in or on the body,* and is appropriate for use in the home. ***"Durable medical***

equipment" *does not include "mobility enhancing equipment".* [68 O.S.Supp.2003, § 1357.6(D)]

"Medical appliance" means any item or replacement part thereof used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life.

"Medical devices" include prosthetic, orthotic, and orthopedic devices. The scope of the term medical devices, however, is broader than the terms prosthetic, orthotic, and orthopedic devices.

"Medical equipment" means machinery, apparatus and other devices intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings.

"Mobility enhancing equipment" *means equipment, including repair and replacement parts for same, which:*

(A) *Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;*

(B) *Is not generally used by persons with normal mobility; and,*

(C) *Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.*

"Mobility enhancing equipment" *does not include* ***"durable medical equipment"*** as defined in this Section. [68 O.S.Supp.2003, § 1357.6(E)]

"Orthopedic device" means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures.

"Orthotic device" means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

"Over-the-counter drug" *means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:*

(A) *A "Drug Facts" panel, or*

(B) *A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.* [68 O.S.Supp.2003, § 1352(16)]

"Practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

"Prescription" means *an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed "practitioner"*, as defined by 68 O.S. § 1357.6. [68 O.S.Supp.2003, § 1352(18)]

~~**"Prosthetic device"** means:~~

~~(A) For purposes of sales to Medicare or Medicaid recipients, *a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:*~~

~~(i) *Artificially replace a missing portion of the body;*~~

~~(ii) *Prevent or correct physical deformity or malfunction; or,*~~

~~(iii) *Support a weak or deformed portion of the body.* [68 O.S.Supp.2003, § 1357.6(C)~~

~~(B) In the case of sales to individuals who are **not** Medicare or Medicaid recipients, **"prosthetic device"** *shall not include corrective eye glasses, contact lenses, or hearing aids, or dental prostheses.* [68 O.S.Supp.2003, § 1357(20)]~~

"Prosthetic device" means *a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:*

~~**"Prosthetic device"** means:~~

(A) *Artificially replace a missing portion of the body;*

(B) *Prevent or correct physical deformity or malfunction; or,*

(C) *Support a weak or deformed portion of the body.*

"Prosthetic device" *shall not include corrective eyeglasses, contact lenses, or hearing aids.* [68 O.S.Supp.2004, §§ 1357(20), 1357.6(C)

~~**"Purchased or leased on behalf of an individual"** means that the item must be specifically bought for the individual who will use the item. Purchases made in bulk and then dispensed to individual patients do not qualify for exemption. For example, if a physician maintains an inventory of crutches or ace bandages which are dispensed to individual patients as needed, the purchase of these items is not exempt since the original purchase was not made on behalf of a specific patient. Conversely, if a physician determines that a patient needs a brace and purchases a brace specifically designed for that patient, the purchase is made on behalf of the individual and will not be subject to the tax.~~

710:65-13-171. Sales of prosthetic devices to individuals

(a) **General provisions.** Sales of prosthetic devices to an individual for use by such individual is exempt from sales tax.

(b) Applicable definitions. For purposes of this Section:

(1) **"Prosthetic device"** means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or,

(C) Support a weak or deformed portion of the body.

(2) **"Prosthetic device"** does **not** include corrective eye glasses, contact lenses, or hearing aids~~, or dental prostheses, unless the sale is to an individual Medicare or Medicaid recipient~~.

(3) **"Use by that individual"** means usage for the purposes and in a manner for which the device was designed and intended.

(c) **Medicare and medicaid recipients.** Eye glasses, contact lenses, and hearing aids are considered items of "medical equipment", and if their cost will be reimbursed by Medicare or Medicaid pursuant to the terms set out in 710:65-13-173, the sale is tax exempt.

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

(1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.

(2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and

(3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item ~~is reimbursable~~ will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order;

(3) A copy of the eligible recipient's Medicare card; and

(4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Examples of durable medical equipment.** A nonexclusive list of **durable medical equipment** is as follows:

(1) **IPPB, circuits, devices and supplies.**

(A) Air oxygen mixers
(B) Emergency oxygen delivery units
(C) Manual resuscitators
(D) Nebulizers, tubing

(2) **Oxygen equipment.**

(A) Cylinder stands, support devices
(B) Cylinder transport devices (sheaths, carts)
(C) Face masks
(D) Liquid oxygen base dispenser
(E) Liquid oxygen portable dispenser
(F) Nasal cannulas
(G) Oxygen concentrators
(H) Oxygen cylinders
(I) Oxygen fittings, accessories
(J) Oxygen humidifiers
(K) Oxygen tubing
(L) Regulators, flowmeters
(M) Tank wrench

(3) **Patient care equipment, physical and occupational therapy.**

(A) Alternating pressure pads
(B) Bed rails
(C) Bedside commodes
(D) Bone fracture therapy devices
(E) Catheter devices and supplies
(F) Colostomy supplies and devices
(G) Communication aids for physically impaired
(H) Crawlers
(I) Crutches, crutch pads, tips
(J) Decubitus seating pads, bed pads
(K) Dressing aids, button loops, zipper aids, etc.
(L) Eating and drinking aids
(M) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
(N) Fitted stroller
(O) Foam seating pads
(P) Foam wedges
(Q) Geriatric chairs
(R) Grooming aids, dental aids
(S) Hand exercise equipment putty
(T) Hospital beds
(U) Household aids for the impaired
(V) Hydro-collators
(W) Hydro-therm heating pads
(X) I.V. stands
(Y) Leg weights (rehab. related)
(Z) Lift recliners
(AA) Muscle stimulators
(BB) Overbed tables
(CC) Paraffin baths
(DD) Patient transport devices, boards
(EE) Patient lifts
(FF) Patient lifts slings
(GG) Posture back supports
(HH) Posture back supports for seating
(II) Raised toilet seats
(JJ) Reaching aids
(KK) Restraints
(LL) Shampoo trays
(MM) Shower grip bars
(NN) Shower seating
(OO) Sitting and sleeping cushions
(PP) Specially designed hand utensils
(QQ) Specialized seating, desks, work stations

(RR) Splints, holders
(SS) Stairglides, lifts in home
(TT) Standing frames, devices and accessories
(UU) Stethoscope
(VV) Toilet safety frames
(WW) Traction stands, pulleys, etc.
(XX) Transcutaneous nerve stimulators
(YY) Trapeze bars-bar stand
(ZZ) Walkers
(AAA) Walker accessories
(BBB) Walking canes, quad canes, accessories
(CCC) Wheel walkers
(DDD) Wheelchairs
(EEE) Writing and speech aids for the impaired

(4) **Respiratory therapy equipment.**
(A) Aerosol compressors (stationary and portable)
(B) Aspirators
(C) Percussors, vibrators
(D) Room humidifiers (with script)
(E) Ultrasonic nebulizers
(F) Volume ventilators, respirators and related device supplies

(e) **Medical appliances.** A nonexclusive list of **medical appliances** is as follows:
(1) Artificial eyes
(2) Artificial limbs
(3) Braces
(4) Canes
(5) Corrective shoes
(6) Crutches
(7) Dialysis machines
(8) Hydraulic lifts
(9) Hypodermic syringes and needles
(10) Orthotic supports (Bandages, belts, and similar supplies)
(11) Oxygen equipment
(12) Pacemakers
(13) Post-surgical bust forms
(14) Pressure pads
(15) Specially built hospital beds
(16) Stoma appliances (colostomy, ileostomy, ureterostomy, catheters)
(17) Trusses
(18) Walkers
(19) Wheelchairs

(f) **Medical devices or medical supplies, not including prosthetic, orthotic, or orthopedic devices.** An illustrative list of **medical devices and medical supplies**, not including prosthetic, orthotic or orthopedic devices, is as follows:
(1) Adhesive bandages
(2) Anesthesia trays
(3) Aneurysm clips
(4) Arterial bloodsets
(5) Aspirators
(6) Athletic supporters
(7) Atomizers
(8) Autolit
(9) Back cushions
(10) Bathing aids
(11) Bathing caps
(12) Bed pans
(13) Bedside rails
(14) Bedside tables
(15) Bedside trays
(16) Bedwetting prevention devices
(17) Belt vibrators
(18) Biopsy needles
(19) Biopsy trays
(20) Blood administering sets
(21) Blood cell washing equipment
(22) Blood pack holders
(23) Blood pack trays
(24) Blood pack units
(25) Blood pressure meters
(26) Blood processing supplies
(27) Blood tubing
(28) Blood warmers
(29) Breast pumps
(30) Breathing machines
(31) Cannula systems
(32) Cardiac electrodes
(33) Cardiac pacemakers
(34) Cardiopulmonary equipment
(35) Catheters
(36) Catheter trays
(37) Chair lifts
(38) Clamps
(39) Clip-on ash trays
(40) Colostomy devices
(41) Commode chairs
(42) Connectors
(43) Contact lens cases
(44) Contact lenses
(~~44~~45) Contact solution
(~~45~~46) Convoluted pads
(47) Corrective eyeglasses
(~~46~~48) Corrective pessaries
(~~47~~49) Cotton balls
(~~48~~50) Dialysis chairs
(~~49~~51) Dialysis supplies
(~~50~~52) Dialyzers
(~~51~~53) Dietetic scales
(~~52~~54) Disposable diapers
(~~53~~55) Disposable gloves
(~~54~~56) Disposable underpads
(~~55~~57) Donor chairs
(~~56~~58) Drainage bags
(~~57~~59) Dressings
(~~58~~60) Drug infusion devices
(~~59~~61) Dry aid kits for ears
(~~60~~62) EKG paper
(~~61~~63) Earmolds
(~~62~~64) Electrodes
(~~63~~65) Emesis basins
(~~64~~66) Endo trach tubes
(~~65~~67) Enema units

(~~66~~68) First-aid kits
(~~67~~69) Fistula sets
(~~68~~70) Foam slant pillows
(~~69~~71) Gauze bandages
(~~70~~72) Gauze packings
(~~71~~73) Gavage containers
(~~72~~74) Geriatric chairs
(~~73~~75) Grooming aids
(~~74~~76) Hand sealers
(77) Hearing aids
(~~75~~78) Hearing aid carriers
(~~76~~79) Hearing aid repair kits
(~~77~~80) Heart stimulators
(~~78~~81) Heat lamps
(~~79~~82) Heat pads
(~~80~~83) Hemodialysis devices
(~~81~~84) Hemolators
(~~82~~85) Hospital beds
(~~83~~86) Hot water bottles
(~~84~~87) Ice bags
(~~85~~88) Ident-a-bands
(~~86~~89) Ileostomy devices
(~~87~~90) Incontinent garments
(~~88~~91) Incubators
(~~89~~92) Infrared lamps
(~~90~~93) Inhalators
(~~91~~94) Insulin infusion devices
(~~92~~95) Iron lungs
(~~93~~96) Irrigation apparatus
(~~94~~97) Irrigation solutions
(~~95~~98) I.V. administering sets
(~~96~~99) I.V. connectors
(~~97~~100) I.V. tubing
(~~98~~101) Karaya paste
(~~99~~102) Karaya seals
(~~100~~103) Kidney dialysis machines
(~~101~~104) Laminar flow equipment
(~~102~~105) Latex gloves
(~~103~~106) Leukopheresis pumps
(~~104~~107) Lymphedema pumps
(~~105~~108) Manometer trays
(~~106~~109) Massagers
(~~107~~110) Maternity belts
(~~108~~111) Medigrade tubing
(~~109~~112) Modulung oxygenators
(~~110~~113) Moist heat pads
(~~111~~114) Myelogram trays
(~~112~~115) Myringotomy tubes
(~~113~~116) Nebulizers
(~~114~~117) Needles
(~~115~~118) Ostomy devices
(~~116~~119) Overbed tables
(~~117~~120) Oxygen equipment
(~~118~~121) Pacemaker equipment
(~~119~~122) Page turning devices
(~~120~~123) Pap smear kits
(~~121~~124) Paraffin baths
(~~122~~125) Physicians instruments
(~~123~~126) Pigskin
(~~124~~127) Plasma extractors
(~~125~~128) Plasmapheresis units
(~~126~~129) Plastic heat sealers
(~~127~~130) Prescribed device repair kits
(~~128~~131) Respirators
(~~129~~132) Resuscitators
(~~130~~133) Sauna baths
(~~131~~134) Security pouches
(~~132~~135) Servipak dialysis supplies
(~~133~~136) Shelf trays
(~~134~~137) Shower chairs
(~~135~~138) Side rails
(~~136~~139) Sitz bath kit
(~~137~~140) Small-vein infusion kits
(~~138~~141) Specimen containers
(~~139~~142) Spinal puncture trays
(~~140~~143) Sponges (surgical)
(~~141~~144) Stairway elevators
(~~142~~145) Steri-peel
(~~143~~146) Stoma bags
(~~144~~147) Stools
(~~145~~148) Stopcocks
(~~146~~149) Strap-on urinals
(~~147~~150) Suction equipment
(~~148~~151) Sun lamps
(~~149~~152) Surgical bandages
(~~150~~153) Surgical equipment
(~~151~~154) Suspensories
(~~152~~155) Sutures
(~~153~~156) Thermometers
(~~154~~157) Toilet aids
(~~155~~158) Tourniquets
(~~156~~159) Trach tubes
(~~157~~160) Transfer boards
(~~158~~161) Transfusion sets
(~~159~~162) Tub sealers
(~~160~~163) Underpads
(~~161~~164) Ureostomy devices
(~~162~~165) Urinals
(~~163~~166) Vacutainers
(~~164~~167) Vacuum units
(~~165~~168) Vaporizers
(~~166~~169) Venous blood sets
(~~167~~170) Vibrators
(~~168~~171) Whirlpools
(~~169~~172) X-ray film

(g) **Orthopedic devices.** A nonexclusive list of **orthopedic devices** is as follows:

(1) Abdominal belts
(2) Alternating pressure mattresses
(3) Alternating pressure pads
(4) Anti-embolism stockings
(5) Arch supports
(6) Arm slings
(7) Artificial sheepskin
(8) Bathtub grab bars
(9) Bathtub lifts

(10) Bathtub seats
(11) Bone cement
(12) Bone nails
(13) Bone pins
(14) Bone plates
(15) Bone screws
(16) Bone wax
(17) Braces
(18) Canes
(19) Casts
(20) Cast heels
(21) Cervical braces
(22) Cervical collars
(23) Cervical pillows
(24) Clavicle splints
(25) Corrective braces
(26) Corrective shoes
(27) Crutch cushions
(28) Crutch handgrips
(29) Crutch tips
(30) Crutches
(31) Decubitus prevention devices
(32) Dentures
(33) Dorsolumbar belts
(34) Dorsolumbar supports
(35) Elastic bandages
(36) Elastic supports
(37) Exercise devices
(38) Eyeglasses
(39) Eyelid load prosthesis
(40) Head halters
(41) Hernia belts
(42) Iliac belts
(43) Invalid rings
(44) Knee immobilizers
(45) Lithotripter
(46) Lumbosacral supports
(47) Mastectomy pads
(48) Muscle stimulators
(49) Nerve stimulators
(50) Orthopedic implants
(51) Orthopedic shoes
(52) Patient lifts
(53) Patient safety vests
(54) Plaster (surgical)
(55) Rib belts
(56) Rupture belts
(57) Sacroiliac supports
(58) Sacrolumbar belts
(59) Sacrolumbar supports
(60) Shoulder immobilizers
(61) Shower chairs
(62) Space shoes
(63) Splints
(64) Toilet seat rails
(65) Toilet seat risers
(66) Traction equipment
(67) Transcutaneous electrical nerve stimulators (tens unit)
(68) Trapezes
(69) Trusses
(70) Walkers, including walker chairs
(71) Walking bars
(72) Water beds
(73) Wheelchairs

(h) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:
(1) Artificial arteries
(2) Artificial breasts
(3) Artificial ears
(4) Artificial eyes
(5) Artificial heart valves
(6) Artificial implants
(7) Artificial larynx
(8) Artificial limbs
(9) Artificial noses
(10) Cosmetic gloves
(11) Heart valves
(12) Organ implants
(13) Penile implants

PART 37. SALES FOR RESALE

710:65-13-201. ~~Retail sales~~ Sales between related entities

(a) Each interdepartmental transfer of tangible personal property and taxable services between various departments of a single legal entity shall not constitute a sale subject to sales tax.

(b) Each transfer of tangible personal property and taxable services between separate legal entities for use or consumption, and not for resale, shall be taxable, unless otherwise exempt by statute pursuant to a reorganization, winding up, dissolution, liquidation, or formation of a corporation, even though:
(1) The entities share common principals or ownerships and operations.
(2) The entities share the same business location.
(3) The entities file consolidated income tax returns for federal and state income purposes or one of the entities is disregarded for income tax purposes.
(4) The entities do not enjoy a profit or expense as a result of the transaction.

(c) When a transaction would be subject to sales tax if the transaction were between two separately owned and operated legal entities, the commonality of the two entities is irrelevant, and sales tax is imposed on the transaction between the two related entities.

(d) **"Separate legal entities"** means entities which are recognized as individual entities either in fact or at law. Taxable transfers of tangible personal property and services between separate legal entities for use or consumption, and not for resale, shall include:
(1) Transfers between individuals and partnerships.
(2) Transfers between individuals and corporations.

(3) Transfers between individuals and unincorporated associations.
(4) Transfers between partnerships and corporations.
(5) Transfers between partnerships and unincorporated associations.
(6) Transfers between partnerships.
(7) Transfers between unincorporated associations and corporations.
(8) Transfers between corporations, whether between sister corporations or parent and subsidiary corporations.
[**See:** 68 O.S. §§ 1354, 1360]

PART 39. SCHOOLS AND HIGHER EDUCATION

710:65-13-210. Exemption for public and private schools and institutions of higher education

(a) **Sales to schools.** Sales of tangible personal property or services to the following entities are exempt from taxation:
(1) Private institutions of higher education.
(2) Private elementary and secondary schools.
(3) Members of the Oklahoma system of higher education.
(4) Public school districts.

(b) **Scope of exemption.** The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher education which are exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) **Sales by a lease or lease-purchase agreement with a school district.** As of July 1, 1999, sales of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district are exempt from sales tax.

(d) **Sales under public contract.** Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) **Certification required.** Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in subsection (a). The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) **Campus or school construction.** Sales for use on campus or school construction projects for the benefit of either the institutions of the Oklahoma system of higher education, ~~or~~ private institutions of higher education accredited by the Oklahoma State Regents for Higher Education, or for public schools or school-districts, are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus or school construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Taxpayer Assistance Division. Along with the request, the following must be supplied:
(1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.
(2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:
(1) separately stated on the admission ticket; and
(2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent organizations.** Private schools, public schools, public school boards, public school districts, and public school student organizations (to include parent organizations) can make sales of tangible personal property, including admission tickets and concessions at athletic events, for fund-raising projects to benefit the school or the organization without collecting and remitting sales tax.
[**See:** 68 O.S. §§ 1356(13),(14)]

(l) **Sales to, or by, parent-teacher organizations.** Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes.

(m) **Sales to career technology student organizations.** Career technology student organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education may make purchases exempt from Oklahoma sales and use taxes and local sales and use taxes.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-330. Oklahoma City National Memorial and Museum

Sales of tangible personal property or services to or by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and is operating the Oklahoma City National Memorial and Museum are exempt from sales tax. [Laws 2004, c. 56, §1]

710:65-13-331. Sales to veterans' organizations for museums and memorials

Sales of tangible personal property or services to organizations which are exempt from federal taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, the members of which are limited to honorably discharged veterans, and which furnish financial support to area veterans' organizations to be used for the purpose of constructing a memorial or museum are exempt from sales and use tax. [Laws 2004, c. 535, §6]

710:65-13-332. Exemption for sale of tickets to collegiate athletic championship events

Sales of tickets for admission to a collegiate athletic event that is held in a facility owned or operated by a municipality or a public trust of which the municipality is the sole beneficiary and that actually determines or is part of a tournament or tournament process for determining a conference tournament championship, a conference championship, or a national championship are exempt from sales tax. [Laws 2004, c. 56, § 1]

710:65-13-333. Sales made in conjunction with public library construction

Sales of tangible personal property or services made on or after January 1, 2003, to an organization, which is exempt from taxation pursuant to the provisions of the 26 U.S.C. § 501(c)(3), and that is expending monies received from a private foundation grant in conjunction with expenditures of local sales tax revenue to construct a local public library, are exempt from sales tax. [Laws 2004, c. 535 § 6]

710:65-13-334. Exemption for qualified museums

(a) **General provisions.** Museums or other entities accredited by the American Association of Museums are exempt from the levy of sales tax on their purchases of tangible personal property and services, and provided that the museum is in compliance with (d)(2) of this Section, on the sales of tickets for admission.

(b) **Certification required for purchases.** Certification, in which the name of the museum or other accredited entity is set out on the face of the invoice or sales receipt to be obtained and retained by the vendor, is required of persons making purchases on behalf of a qualifying museum or other accredited entity, in order to support the exemption pursuant to *OAC* 710:65-3-30 and 710:65-3-33.

(c) **Application procedure.** Application for the exemption on purchases shall be made to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, the information described in this subsection must be submitted:

(1) Legal name of the entity seeking exemption;
(2) Mailing address;
(3) Location address;
(4) Federal employer's identification number; and,
(5) Written confirmation that the applicant is currently accredited by the American Association of Museums.

(d) **Exemption limited to eligible, properly-documented transactions.**

(1) Only those purchases actually purchased by the museum or other accredited entity, invoiced to the museum or entity, and paid for by funds or check directly from the museum or other accredited entity, will qualify for the exemption on purchases.

(2) To qualify for the exemption on sales of admission tickets, the museum must separately state an amount equivalent to the tax which would otherwise have been required to be collected on the face of the admission ticket and must use the amount so stated and so collected solely for the purpose of servicing debt incurred by the museum in the construction, enlargement, or renovation of facilities used or to be used for the entertainment, edification, or cultural cultivation of persons admitted to the museum or facility. The museum or other accredited entity must maintain records adequate to show that the proper amount was collected in lieu of the tax and that those funds were used for purposes of servicing qualifying projects.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to museums and other accredited entities.

710:65-13-335. Limited exemption for organizations which sponsor and promote educational, charitable, and cultural events for disadvantaged children

(a) **Qualification for educational, charitable, and cultural events for disadvantaged children exemption.** Effective July 1, 1996, the first $15,000.00 of each calendar year's sales, to or by, organizations which were established to sponsor or promote educational, charitable, or cultural events for disadvantaged children, are exempt from sales tax.

(b) **Application process.** Application must be in the form of a letter requesting recognition which should provide the legal name of the entity seeking exemption, a current mailing

address, the entity's federal employer's identification number, and the supporting documentation described in subsection (c).

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3); and

(2) Documentation showing that the organization was established to sponsor and provide educational, charitable, and cultural events for disadvantaged children, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; and,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only the first $15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-336. Exemption for Disabled American Veterans, Department of Oklahoma, Inc. and subordinate chapters

(a) **General provisions.** Disabled American Veterans, Department of Oklahoma, Inc. and its subordinate chapters are exempt from the levy of sales tax on purchases of tangible personal property and services.

(b) **Application procedure.** Application for exemption shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Location address;

(4) Federal employer's identification number; and,

(5) Written confirmation that the applicant is a currently recognized chapter of the Disabled American Veterans, Department of Oklahoma, Inc.

710:65-13-337. Qualifications for "Meals on Wheels" exemption

(a) **Qualification for Meals on Wheels exemption.** Sales tax does not apply to the sale of food, food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S.Supp.1993. §1357(11)(a), and which are commonly referred to as "Meals on Wheels," "Mobile Meals," and the like.

(b) **Application process.** Application shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) legal name of the entity seeking exemption;

(2) mailing address;

(3) location address;

(4) federal employer's identification number; and,

(5) name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3); and,

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food or food products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for "Meals on Wheels," "Mobile Meals," and similar programs enumerated in 68 O.S.Supp.1993, §1357(11)(a), may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to "Meals on Wheels" and similar programs.

710:65-13-338. Qualifications for "Older Americans Act" exemption

(a) **Qualification for the Older Americans Act exemption.** Sales tax does not apply to the sale of food or food products, or any equipment or supplies used in the preparation of

the food or food products, to or by organizations enumerated in 68 O.S.Supp.1993, §1357(11)(b), and which receive federal funding pursuant to the Older Americans Act of 1965, for purposes of providing nutrition programs for the care and benefit of elderly persons.

(b) **Application process.** Application shall be made on forms provided by the Commission.

Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) legal name of the entity seeking exemption;
(2) mailing address;
(3) location address;
(4) federal employer's identification number; and,
(5) name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3);
(2) A written description stating the activities of the organization, as evidenced by copies of:
(A) Articles of incorporation;
(B) By-laws;
(C) Brochure; or,
(D) Notarized letter from the President or Chairman of the organization; and,
(3) Copy of notification letter approving the organization for funding under the Older Americans Act of 1965.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food or food products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for "Older Americans Act" organizations, enumerated in 68 O.S. Supp. 1993, §1357(11)(b), may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to "Older Americans Act" organizations.

710:65-13-339. Qualifications for "Collection and Distribution Organization" exemption

(a) **Qualification for Collection and Distribution Organization exemption.** Effective May 26, 1993, sales tax does not apply to the sale of tangible personal property to or by organizations enumerated in 68 O.S.Supp.1993, §1357(12), and which are primarily involved in the collection and distribution of food and household products to other organizations that are exempt from taxation pursuant to 26 U.S.C. §501(c)(3).

(b) **Application process.** Application shall be made on forms provided by the Commission.

Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) legal name of the entity seeking exemption;
(2) mailing address;
(3) location address;
(4) federal employer's identification number; and,
(5) name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3);
(2) A written description stating the activities of the organization, as evidenced by copies of:
(A) Articles of incorporation;
(B) By-laws;
(C) Brochure; or,
(D) Notarized letter from the President or Chairman of the organization; and,
(3) List of organizations, including federal employee identification numbers, to which items were distributed for the previous calendar year.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food, food products, and household products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Other limitations.** The exemption set out in this Section does not apply to sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business.

(f) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352 are taxable to the contractor. A contractor who performs improvements to real property for a "Collection and Distribution" organization, enumerated in 68 O.S.Supp.1993, §1357(12) may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a "Collection and Distribution" organization.

710:65-13-340. Exemptions for volunteer fire departments

(a) Sales to volunteer fire departments which are organized under 18 O.S. § 592 are exempt from sales tax. In order for the department to qualify for the exemption, an exemption card must be obtained from the Oklahoma Tax Commission which shall be proof of the exemption.

(b) A vendor shall obtain the documentation set out in OAC 710:65-13-15 in order to be relieved of liability for sales tax on such sales.

(c) Additionally, volunteer fire departments which are organized under 18 O.S. Section 592 are exempt from having to charge sales tax on the first Fifteen Thousand Dollars

($15,000.00) of sales per year which are made for the purpose of raising funds for the benefit of the department, provided the sales are made on no more than six days per year. [Laws 2004, c. 535 § 6]

710:65-13-341. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and the Campfire Girls and Boys

(a) **General provisions.** Council and state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and the Campfire Girls and Boys are exempt from the levy of sales tax on purchases of tangible personal property and services. **Dens**, **packs**, **troops**, or similar groups affiliated with a council or state supervisory organization of the Boy Scouts of America, Girl Scouts of U.S.A., or the Campfire Girls and Boys are not included within the scope of the exemption described in this Section.

(b) **Application procedure.** Application for exemption shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:

(1) Legal name of the entity seeking exemption;
(2) Mailing address;
(3) Location address;
(4) Federal employer's identification number; and,
(5) A determination letter or group ruling from the Internal Revenue Service.

710:65-13-342. Qualifications for "Juvenile Rehabilitation" exemption

(a) **Qualification for the Juvenile Rehabilitation exemption.** Effective July 1, 1996, sales tax does not apply to the sale of goods or services to organizations which take court-adjudicated juveniles for purposes of rehabilitation and which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). However, at least fifty percent (50%) of the juveniles served by the organization must be court-adjudicated and the organization must receive state funds in an amount which is less than ten percent (10%) of the annual budget of the organization.

(b) **Application process.** Application shall be made by letter, addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) Legal name of the entity seeking exemption;
(2) Mailing address;
(3) Location address;
(4) Federal employer's identification number; and,
(5) Name(s) and current mailing address(es) of responsible officer(s).

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3);
(2) A copy of the last audit, income tax informational return, or other financial statements which will show that for the last fiscal year end before application, less than 10% of the budget of the organization was from state funds;
(3) A statement signed by a responsible officer of the organization that sets out the percentage of juveniles served which were court-adjudicated during the last fiscal year, giving the total number served, and the total number of those that were court-adjudicated;
(4) A written description stating the activities of the organization, as evidenced by copies of:
    (A) Articles of incorporation;
    (B) By-laws;
    (C) Brochure; or,
    (D) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for "Juvenile Rehabilitation" organizations may **not** purchase the tangible personal property or services used to perform the contract exempt from sales tax under the exemption provided by statute to "Juvenile Rehabilitation" organizations.

710:65-13-343. Exemption for qualified youth athletic teams

Youth athletic teams which are a part of an athletic organization exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(4) are exempt from having to charge sales tax on the first Fifteen Thousand Dollars ($15,000) of sales per year which are made for the purpose of raising funds for the benefit of the team.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 1. "A"

710:65-19-5. Sales of alcoholic beverages ~~and tobacco products~~

~~(a)~~ Persons selling alcoholic beverages to purchasers for use or consumption are required to remit sales tax to the Commission upon the total retail value from such sales, pursuant to *OAC* 710:20-5-4, notwithstanding the fact that manufacturers

and importing distributors of alcoholic beverages are required to pay certain taxes.

~~(b) Persons selling cigarettes, cigars and other tobacco products must collect, report and remit sales tax when selling such products to purchasers for use or consumption.~~

710:65-19-11. Automotive transactions

(a) **Automobile painting.** The painting of automobiles is a service by the painter. Receipts from such painting are not sales taxable. Paint, supplies, etc., used or consumed by the painter are taxable when sold to or purchased by him.

(b) **Automobile repairers.** Automobile repairmen or service centers, including body shops, are vendors of repair parts for motor vehicles if they purchase parts, mark them up and itemize parts by article and price. They should segregate on the invoices to their customers and in their records, the marked-up selling price of the parts, the charges for repair labor, and the charges for installation labor and other services. If the labor and other services are not thus shown separately from the selling price of the parts it will be presumed that the entire charge represents the sale price of the parts.

(c) **Parts utilized by the repairer.** Parts utilized by the repairer, including body shops, incidental to the repair service and not itemized and charged separately are considered to be used, not sold, by the repairman and are subject to sales or use tax at the time purchased by the repairman. If the repairman does purchase these items exempt and later uses the items, they are subject to sales tax on their **"sales value"**, as defined in *OAC* 710:65-1-2, at the time the items are withdrawn from inventory by the repairman for consumption or use. If instead, the repairman includes a **"shop charge"** on the bill or invoice to the customer, as a method of billing the customer for the incidental items that were purchased exempt from tax, the **"shop charge"** is subject to sales tax. [**See:** 68 O.S. §§ 1352, 1357~~, 1362(C)~~]

(d) **Automotive bodyshops.** ~~Bodyshops are~~ While body shops are automotive repairers in connection with the purchase and sale of repair parts used in making repairs to vehicles, they are the consumers of sandpaper, buffers, rags, masking tape, prime body filler, paint, tools, and related supplies used by them in the repair and/or painting of motor vehicles and therefore sales or use tax is due and payable upon the ~~acquisition~~ purchase of such ~~purchase~~ items by the bodyshops.

(e) **Wheel balancing.** The balancing of wheels of automobiles is a service by the balancer. Receipts from such wheel balancing are not taxable. Where the customer is not separately invoiced for the wheel weights used by a balancer, they are considered to be tangible personal property consumed by the wheel balancer and are taxable when sold to him.

(f) **Sales of weights used by wheel balancers.** Sales of weights used by wheel balancers for which a separate charge is made to their customers, are sales for resale, provided the wheel balancer has a valid sales tax permit.

PART 5. "C"

710:65-19-56. Contractors and subcontractors

(a) **Definition.** The term **"contractor"** as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

(b) **General provisions.** As consumer/users, contractors must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop, repair, alter, remodel, and improve real property.

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** 710:65-7-6 and 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through

the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(d) **Fabrication by contractors.** A contractor may fabricate part or all of the articles to be used in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items from sheet metal purchased and used pursuant to a contract for the construction or improvement of real property. In such a contract the purchase by the contractor is a purchase by a consumer or user and the contractor is required to pay the sales or use tax at the time of purchase. This is so, whether the articles fabricated are used in the alteration, repair or reconstruction of an old building, or in new construction.

710:65-19-59. Store coupons

(a) Since a store is reimbursed by the manufacturer for the amount of a manufacturer's coupon, the sales tax is computed on the gross sales price without any deduction for the coupon. To illustrate: A container of laundry detergent sells for $2.50 and the purchaser has a manufacturer's coupon with $.50. The sales tax is computed on the gross sales price of $2.50.

(b) In the case of coupons issued by a store for its own product, the amount of the coupon is not subject to sales tax. To illustrate: A container of laundry detergent sells for $2.50 and the purchaser has a coupon issued by that store ~~with~~ worth $.50. The sales tax is computed on the net sales amount of $2.00. This is considered to be a discount given by the store. [**See:** 68 O.S. §1352]

(c) The sale of a booklet or brochure containing certificates which entitle the recipient to order and receive specific manufacturers' coupons, that are then redeemable at a retail store, is not subject to sales tax.

PART 29. "O"

710:65-19-241. Fractionation tanks (frac tanks) [REVOKED]

~~(a) "**Frac tank**" means any portable or stationary, high volume holding vessel designed and constructed for use in separating, storing, or temporarily holding materials used in or resulting from fracturing techniques used in oil and gas exploration. [17 O.S. § 54 et. seq]~~

~~(b) Mobile frac tanks do not qualify for special mobilized machinery registration or for commercial trailer registration under the Oklahoma Vehicle License and Registration Act.~~

~~(c) A mobile frac tank is classified as personal property and is subject to the provisions of the Oklahoma Ad Valorem Tax Code.~~

~~(d) The sales tax levied by 68 O.S. § 1354 applies to the gross receipts or gross proceeds from the sale, rental, or lease of mobile frac tanks, unless otherwise exempted.~~

PART 31. "P"

710:65-19-261. Physicians and optometrists

(a) Physicians and optometrists are the consumers of the supplies, medicines, office furniture and fixtures, and special tools and equipment they use in the practice of their profession. Sales of supplies, etc., to them are subject to the sales tax.

(b) When physicians or surgeons sell items of tangible personal property such as medical bracelets, crutches, wheelchairs, first-aid kits, and the like, to purchasers apart from their rendering of service as physicians or surgeons, they collect, report and remit sales tax on the gross receipts from these sales.

(c) Physicians and optometrists are engaged in professions that primarily render service. To the extent to which they engage in such professions, they are not engaged in the business of selling tangible personal property to purchasers within the meaning of the Code. Consequently, they are not required to remit sales tax measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property dispensed incidentally to such service, such as eyeglasses or contact lenses. However, the physician or optometrist must pay sales or use tax when purchasing such tangible personal property.

PART 39. "T"

710:65-19-329. Services relating to telecommunications and telecommunications equipment

(a) **General provisions.** Charges for labor or repair services performed on equipment or wiring which is connected with the transmission of messages, voices or images or connected with equipment used for the transmission of messages, voices or images are subject to sales tax, regardless of whether the charge is stated separately from charges for either telecommunications service or for tangible personal property.

(b) **Examples of taxable transactions.** Services subject to sales tax include, but are not limited to, the following:

(1) Installation of telecommunications equipment;

(2) Movement of telecommunications equipment;

(3) Repair or servicing of telecommunications equipment;

(4) Maintenance of telecommunications equipment; and

(5) Charges for wiring or rewiring, regardless of location, for use with telecommunications equipment.

(c) **Specific exemption.** Specifically exempted from the levy of sales tax are *labor charges for the construction, installation, movement, servicing repair or maintenance of any equipment such as antennas or dishes that have a connection with the transmission of a message or image from cellular towers that are used for the transmission of telecommunications.* [68 O.S.Supp.2004 § 1354(A)(4)(a)(4)]

(~~c~~d) **Maintenance contracts.** The sale of maintenance contracts for services subject to sales tax as described in this Section ~~are~~ is subject to sales tax.

(~~d~~e) **Applicability of rule.** The provisions of this Section apply generally to all providers of services relating to telecommunications and telecommunications equipment. In addition to requirements similar to those set out in this Section, taxation of telecommunications services
rendered by telephone companies is further addressed in 710:65-19-330.

710:65-19-331. Prepaid telephone calling cards, telephone authorization numbers, and recharges

(a) **General provisions.** A prepaid telephone calling card is an article of tangible personal property, which entitles the holder of the card to a predetermined amount of telecommunications services. ~~The cards may be sold by retail vendors, such as convenience stores, which are not, otherwise, providers of telecommunications services.~~ The holder of a calling card can generally initiate calls from any location in the United States. The cards may be sold by retail vendors, such as convenience stores, which are not, otherwise, providers of telecommunications services and may be purchased exempt for resale by vendors who hold valid sales tax permits.

(b) **Point of sale.** The sale of a prepaid telephone calling card, prepaid telephone authorization number, or the recharge of a prepaid calling card or authorization number is subject to sales tax at the point of sale by the retail vendor, as determined by *OAC* ~~710:65-17-1~~710-65-18-3. ~~If the sale or recharge of a prepaid telephone calling card or authorization number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address. If there is no item shipped, then the point of sale shall be the customer's billing address. The cards may be purchased exempt for resale by vendors who hold valid sales tax permits.~~

(c) **Vending machines.** Vending machines which are used to vend prepaid telephone calling cards require a Coin-operated Vending Device decal. As a result, the entire gross proceeds from the sale of the cards through vending machines are exempt from sales tax pursuant to 68 O.S. §1503(B).

PART 41. "U"

710:65-19-341. Natural or artificial gas and electric utility services

(a) **General provisions.** Generally, the sale of utilities or public services, including natural or artificial gas and electricity~~, and associated delivery or transmission services,~~ are subject to sales tax. [**See:** 68 O.S.Supp. 1999, § 1354(A)(2)]

(b) **Exemptions and exclusions.** Natural or artificial gas and electricity sold exclusively for residential use~~, including any charges for associated delivery or transmission service,~~ are exempt from the Oklahoma sales tax, but remain subject to any applicable municipal and county sales taxes in effect at the time of the sale. [**See:** 68 O.S.Supp. 1999, § 1357(3) and 710:65-13-120]

(c) **Point of sale for gas and electricity.** For purposes of any applicable municipal and county sales taxes, the point of sale for gas and electric utility services is determined to be the location of the meter by which the purchaser's usage is measured.

(d) **Minimum service charges.** When a fixed monthly charge is billed to a customer by a natural gas or electric utility and there is no consumption, this charge is not subject to sales tax. If any amount of gas or electricity is consumed, the minimum charge is subject to sales tax.

(e) **Other charges.** Charges which are separately stated and are unrelated to the amount of gas or electricity used ~~or delivery or transmission thereof,~~ such as fees for meter reading, installation, initiation, disconnection, or restoration of service, as well as charges for returned checks or for late payment, are not subject to sales tax.

PART 43. "V"

710:65-19-351. Volunteer fire companies [REVOKED]

~~Inasmuch as incorporated volunteer fire companies are non-profit corporations in the town in which they are located, such volunteer fire companies may not make their purchases exempt from sales and use tax unless specifically provided for by Statute.~~

[OAR Docket #05-740; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 75. TOURISM PROMOTION

[OAR Docket #05-736]

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PERMANENT final adoption
RULES:
710:75-1-8. Filing requirements; interest; penalty [AMENDED]
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68 O.S. §§ 203, 50013; Oklahoma Tax Commission
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n/a
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ANALYSIS:
Section 710:75-1-8, has been amended to conform with the provisions of Senate Bill 1122(2), which changed the delinquency date for reporting and remitting taxes due pursuant to the Oklahoma Tourism Promotion Act. [**68:50013**]
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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

710:75-1-8. Filing requirements; interest; penalty

The following filing requirements apply to all those taxpayers required to file Tourism Promotion Gross Receipts Tax Reports:

(1) Taxpayers must report tourism promotion gross receipts tax on the forms prescribed and furnished by the Oklahoma Tax Commission.

(2) Returns are due on the ~~15th~~ 20th day of each month for the liability incurred the previous calendar month. However, those taxpayers who are permitted to file semiannual sales tax reports pursuant to 68 O.S. §1365(B), may file semiannual Tourism Promotion Gross Receipts Tax Reports and remit taxes due thereunder to the Tax Commission on or before the ~~15th~~ 20th day of January and July of each year for the preceding six-month period.

(3) If payment of the tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the ~~15th~~ 20th of the month, the tax shall be delinquent from that date. Reports timely mailed shall be considered timely filed. If a remittance is not timely made, interest at the rate of one and one-fourth percent (1.25%) per month shall be charged from the date the remittance should have been made until the tax is actually paid.

(4) If payment of the tax due is not made within fifteen (15) days of the due date, a ten percent (10%) penalty will be applied.

[OAR Docket #05-736; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #05-738]

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ANALYSIS:
The amendments streamline the procedures for reporting and remitting taxes withheld by a pass-thru entity, and modify withholding requirements for a non-resident member to avoid withholding requirements imposed by 68 O.S. § 2385.30 if the member voluntarily submits to the jurisdiction of the Commission. Procedures have been established for the filing of affidavits for this purpose with the member's pass-through entity, and for reporting the information to the Commission. New language has been added to reflect the exempt status of certain publicly-traded partnerships. Finally, a Section has been added to note that where the pass-through entity is making distributions subject to withholding for out-of-state attorneys pursuant to 5 O.S.Supp.2004, § 1.6 and is withholding accordingly, such distributions will not be subject to pass-through entity withholding requirements.

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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from ~~each distribution~~ distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;

(E) A member of a limited liability company; or,

(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the ~~cash distribution or the Oklahoma net distributed income if determinable at the time of distribution~~ taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the ~~cash distribution or the Oklahoma distributed net income if determinable at the time of distribution~~ taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** ~~Persons, other than individuals, who are exempt from federal income tax are not subject to having income tax withheld under this Section. Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code are not subject to having income tax withheld under this Section. Also, insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax under 68 O.S. § 2359(c) are not subject to having income tax withheld under this Section.~~ The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-17-17 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

~~(4) When a distribution made by a pass-through entity is determined to be not subject to the provisions of this Section by the Commission; or,~~

(4) When a pass-through entity is making distributions subject to the withholding requirements for non-resident attorneys set out in 5 O.S.Supp.2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;

(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt~~.~~;

(6) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,

(7) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to ~~file an Oklahoma Tax Commission Form OW-9-C and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:~~ remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

~~(1) **First quarter.** For distributions made during January, February, and March, the amount withheld is due no later than April 30;~~

~~(2) **Second quarter.** For distributions made during April, May, and June, the amount withheld is due no later than July 31;~~

~~(3) **Third quarter.** For distributions made during July, August, and September, the amount withheld is due no later than October 31; and~~

~~(4) **Fourth quarter.** For distributions made during October, November, and December, the amount withheld is due no later than January 31 of the following year.~~

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of ~~the distribution~~ taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), ~~by last day of the second month after the end of its taxable year, showing the member's respective amount of income and the tax withheld~~ on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-Bs, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form OW-9-C) on or before the due date of the pass-through entity's income tax return, including extensions.

(~~2~~3) Each non-resident member must enclose a copy of ~~the~~ OTC Form 500-B to the Oklahoma income tax return as verification for this withholding. ~~Copies of Form 500-Bs, along with the Oklahoma Tax Commission Form 501, must be sent to the Oklahoma Tax Commission by the same date.~~

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit

the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

[OAR Docket #05-738; filed 4-28-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #05-741]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Out-of-State Attorney Registration [NEW]
710:95-13-1. Out-of-state attorney registration [NEW]
AUTHORITY:
5 O.S. Supp.2004, § 1.6, 68 O.S. § 203; Oklahoma Tax Commission
DATES:
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Superseded rules:
Subchapter 13. Out-of-State Attorney Registration [NEW]
710:95-13-1. Out-of-state attorney registration [NEW]
Gubernatorial approval:
November 4, 2004
Register Publication:
22 Ok Reg 295
Docket number:
#04-1466
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The new rule establishes forms and procedures for the new registration process, discusses the persons and entities who may have an income tax reporting duty or withholding requirement under the new law, and establishes an annual renewal process for registrants.
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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 13. OUT-OF-STATE ATTORNEY REGISTRATION

710:95-13-1. Out-of-state attorney registration

(a) **Registration of out-of-state attorneys.** Every out-of-state attorney retained or engaged to provide any legal services in this state, as described in 5 O.S.Supp.2004, § 1.2, must register with the Oklahoma Tax Commission and obtain a Verification Letter.

(b) **Registration process.** Upon the application provided for in 5 O.S.Supp.2004, § 1.5 being granted by the Oklahoma Bar Association, the out-of-state attorney must submit a completed registration form, along with a copy of the Statement granting registration as an out-of-state-provider of legal services obtained from the Oklahoma Bar Association to the Taxpayer Assistance Division of the Oklahoma Tax Commission, either by mail at P.O. Box 26920, Oklahoma City, OK 73126-0920, or in person at 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194.

(c) **Registration forms.** Oklahoma Tax Commission registration forms will be provided by the Oklahoma Bar Association pursuant to its registration process. Additionally, the Tax Commission registration forms may be obtained from the Taxpayer Assistance Division of the Oklahoma Tax Commission, or online at www.oktax.state.ok.us.

(d) **Verification of registration.** Upon successful completion of its registration process, the Oklahoma Tax Commission will provide a Verification Letter and withholding tax return, **OTC Form OW-9-D**, to the out-of-state attorney. Notice of the Verification Letter will be provided to any associated Oklahoma attorneys. The out-of-state attorney is to provide a copy of **OTC Form OW-9-D** to the client, common fund, person, or entity paying for the legal services.

(e) **Withholding requirement.** A client, common fund, or any other person or entity paying for services of the out-of-state attorney must withhold five percent (5%) of all amounts

paid for legal services performed in Oklahoma in connection with any proceeding described in 5 O.S.Supp.2004, § 1.2, and remit the withheld amount, along with **OTC Form OW-9-D**, to the Oklahoma Tax Commission, P.O. Box 26860, Oklahoma City, OK 73126-0860, on or before the fifteenth (15th) day of the month following the date on which payment for the legal services was made.

(f) **Reporting procedures.** By February 28 of each year, an Annual Information Return (**OTC Form 501**), must be filed with the Oklahoma Tax Commission summarizing payments made to out-of-state attorneys and entities. In addition, by February 28, **OTC Form 500-C** (Report of Out-of-State Attorney Income Tax Withheld), reporting amounts withheld pursuant to this Section shall be filed with the Commission, showing the name, address, and social security or federal identification number of the out-of-state attorney or entity for whom the income tax was withheld and paid, as well as the name, address, social security number or federal identification number, and telephone number of the payor. A copy of **Form 500-C** (Report of Out-of-State Attorney Income Tax Withheld) must be provided to the out-of-state attorney or entity by February 28 of the succeeding calendar year.

(g) **Filing requirement for Income Tax.** Any non-resident attorney or entity having Oklahoma source income from compensation for the provision of personal or legal services, or both, is required to file an Oklahoma income tax return and enclose a copy of **Form 500-C** (Report of Out-of-State Attorney Income Tax Withheld).

(h) **Renewal of registration.** If the out-of-state attorney continues to provide legal services in this state on the anniversary date of the initial registration, the sworn affidavit required by 5 O.S.Supp.2004, § 1.13(B) must be filed with the Oklahoma Bar Association and a copy of the affidavit forwarded to the Oklahoma Tax Commission, P.O. Box 53403, Oklahoma City, OK 73152-3403.

[OAR Docket #05-741; filed 4-29-05]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #05-789]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Permitting of Oversize, Overweight and Special Combination Vehicles
730:30-9-15. [AMENDED]
AUTHORITY:
Oklahoma Transportation Commission; 69 O.S., §§ 101, 301, 303, and 4006.
DATES:
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January 18, 2005 through February 18, 2005
Public hearing:
None requested
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March 23, 2005
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Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2005.
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May 6, 2005
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June 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This rule was requested by the Department of Public Safety. The rulemaking action is necessary to dispatch oversize, overweight and special combination emergency vehicles under the direction of the Commissioner of Public Safety in the event of a disaster. The rule also provides a mechanism to move equipment and manufactured homes for use by emergency personnel and victims.
CONTACT PERSON:
Michael E. Mayberry, Assistant Director-Administration, ODOT, 200 N.E. 21st Street, Room 1B-7, Oklahoma City, OK 73105, 405-522-6000

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2005:

SUBCHAPTER 9. PERMITTING OF OVERSIZE, OVERWEIGHT AND SPECIAL COMBINATION VEHICLES

730:30-9-15. Movements of oversize and/or overweight vehicles during a life threatening emergency

(a) For purpose of thus subchapter, "Disaster" includes flood, tornado, fire, or any other large scale emergency situation that causes or threatens to cause the loss of life or destruction or damage to property of such magnitude as to seriously endanger the public health, safety, or welfare, or causes or threatens destruction of or major damage to any transportation system.

(b) During major emergencies, authorization may be obtained from ~~any~~the Department of Public Safety Permit Office for the emergency movement of necessary vehicles and/or loads which exceed the maximum legal dimensions and weight limitations, to or within the emergency area without a standard oversize or overweight permit; however, normal permit requirements shall be observed ~~when practicable~~unless otherwise authorized. During regular office hours, ~~a~~the Department of Public Safety Permit Office shall be contacted for assistance in routing. When ~~said~~ the Permit ~~Offices are~~Office is closed, the Communications ~~Section~~Center of the Department of Public Safety (405/425-2424) will contact Permit officials

~~as needed~~for permit authorization. All movements made on emergency authorization are required to obtain the applicable permit or permits on the next Department of Public Safety working day.

(c) Following the emergency, unless otherwise authorized, ~~such~~the vehicles and/or loads shall be moved from the disaster area under normal permit, conditions and authority. The Commissioner may issue an emergency authorization or permit for movement to an emergency and return on the same route to the point of origin. The permit or authorization for vehicles going to the emergency may also allow night, weekend, or holiday travel. The permit or authorization to return to the point of origin may also allow daytime weekend or holiday travel.

(d) In the event an area has been declared a disaster area by the President or Governor, manufactured homes may be authorized to move into the area without a standard permit; provided, the 16 feet maximum width limitation shall apply when ~~travelling~~traveling on routes of the Dwight D. Eisenhower National System of Interstate and Defense Highways. ~~Such~~The manufactured homes must be owned by the victims of the disaster or otherwise brought into the area for public relief purposes. If the units are furnished by the Federal Department of Housing and Urban Development (HUD), the ~~Oklahoma City~~ Permit Office of the Department of Public Safety will generally authorize movement in conformance with the American Association of State Highway and Transportation Officials' National Policy; ~~however, said~~the Permit Office may include such additional restrictions in its authorization as are considered necessary. ~~All such movements made~~Movements under this emergency authorization are required to obtain the appropriate permit or permits on the next ~~working~~business day.

(e) The emergency movement of vehicles and/or loads to railroad derailments may be authorized on state highways during periods when normal permits are restricted, provided:

(1) a loss of life is threatened, or hazardous materials are involved, or a mainline railroad or other major rail line or transportation facility is blocked~~, and the Department of Public Safety is notified of the incident no more than 6 hours after it has occurred. If more than 6 hours have elapsed before said Department is advised, the situation will not generally be considered to constitute an emergency~~; and

(2) during normal working hours, the emergency ~~services vehicles~~service company shall obtain standard permits by contacting a Department of Public Safety Permit Office. If the emergency occurs when ~~said~~the Permit ~~Offices are~~Office is closed, the emergency service company ~~representatives~~may, if authorized, self issue a provisional permit under established rules. If not authorized, a representative shall contact the Department of Public Safety Communications Center (405/425-2424) ~~within 6 hours of the time of occurrence~~ to request ~~such movements and provide the necessary details~~emergency movement authorization. The information required ~~information normally provided~~ before authorization will be granted includes the ~~exact~~ location of the incident, time of occurrence, description of equipment needed and the origin and requested routing of the movement.~~; however, if.~~ If loss of life is threatened or any major transportation facility is blocked, ~~said~~ Permit ~~Office~~Officials may waive the ~~immediate need~~requirement for certain items of such information. ~~Movements made on emergency authorization are required to obtain the applicable permit or permits on the next working day.~~

[OAR Docket #05-789; filed 5-6-05]

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

[OAR Docket #05-795]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Organization, Meetings And Comprehensive Water Plan
785:1-3-1. Origin, composition and operations of the Board [AMENDED]
Subchapter 5. Rules
785:1-5-3. Amending of rules or Standards by Board [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., § 1085.2.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:

Oklahoma Administrative Code Section 785:1-3-1 describes, among other things, how the membership of the Oklahoma Water Resources Board ("OWRB") is determined, and provides for election of officers of the OWRB members. The adopted amendment adds language providing that no person shall serve as chairman for more than two consecutive years. This amendment is needed, and its intended effect is, to ensure that a member's term as chairman is limited.

Section 785:1-5-3 explains how the rules of the OWRB are subject to amendment in accordance with the provisions of applicable State and federal law. The OWRB has amended this rule by deleting certain problematic language, and correcting and updating other language. These amendments are needed because the current language in subsection (c), regarding notice of rules changes, creates problems in administration and is needlessly repetitious of language from the Administrative Procedures Act ("APA"), 75 O.S. 250 and following. Other language in the rule is outdated and needs to be corrected. The intended effect of these amendments is to delete the

problematic subsection (c), revert to the APA notice requirements, and correct the outdated language.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S., § 1085.2.

CONTACT PERSON:

Jerry Barnett, Staff Attorney, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. ORGANIZATION, MEETINGS AND COMPREHENSIVE WATER PLAN

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

(a) **Origin and composition.** The Oklahoma Water Resources Board was created as a seven-member Board by an Act of the Twenty-Sixth Oklahoma Legislature in 1957. By an Act of the Second Session of the Thirty-Third Legislature in 1972, a nine-member Board was created, one member being appointed from each of the Congressional Districts of the State, and three members appointed at large. At all times the membership shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, irrigational, municipal, rural residential, agricultural, and soil conservation work, but no more than two (2) members may be selected representing any one of the major types of water use. A chairman, vice-chairman, and secretary shall be elected annually, provided that no person shall serve as chairman for more than two consecutive years.

(b) **Operations of Board.** The Executive Director, appointed by the Board, manages the day-to-day operations and staff members of the Board. Four divisions of the Board, each supervised by a Division Chief, have been established as follows: Planning and Management Division, Financial Assistance Division, Water Quality Programs Division and Administrative Services Division. The public may obtain information or make submissions or requests by contacting the appropriate Division staff in person, in writing or by telephone. Other rules may also be applicable to obtain information or make submissions or requests. The Board retains final authority over all matters before the agency unless otherwise provided by law. Agenda items for all meetings of the Board are processed through the appropriate Division and approved for placement on the agenda by the Executive Director in consultation with the Chairman.

SUBCHAPTER 5. RULES

785:1-5-3. Amending of rules or Standards by Board

(a) These rules and regulations may, from time to time, be expanded, amended or repealed by the Board pursuant to the Oklahoma APA.

(b) Oklahoma's Water Quality Standards (Standards)~~, promulgated by the Board under authority of the Pollution Remedies Act, 82 O.S. 1981, §§926.1 et seq.,~~ are considered to be "rules" of the Board adopted through its "rulemaking" process under the APA, the special requirements in ~~the Pollution Remedies Act~~ other applicable State statutes and the requirements of the federal Clean Water Act and U.S. Environmental Protection Agency regulations thereunder. The Board follows such requirements in amending or revising the ~~standards~~ Standards. The ~~standards~~ Standards include beneficial use designations for various waters of the state and criteria to protect such uses. In amending or revising beneficial use designations, in conjunction with other amendments or revisions or separately, the following shall also apply:

(1) If the Board makes a preliminary determination that a previously adopted beneficial use designation for any waters of the state was based on inaccurate, incomplete or insufficient data, information, or studies, and that said designation should be modified, the Board shall, as soon as practical, propose a modification to the use designated.

(A) Notice of said proposed modification shall be given in accordance with the requirements of the ~~Pollution Remedies Act,~~ APA~~,~~ and other applicable laws or regulations.

(B) Data, information or studies to support said modification shall be made available for public review at least thirty (30) days prior to the public hearing.

(C) Written and oral comments and additional data, information or studies in support of or in opposition to the proposed modification may be presented by any person at the public hearing.

(2) The Board may adopt the proposed modification if:

(A) The data, information or studies upon which the proposed modification is based was not available to the Board when it designated the beneficial use, or

(B) The data, information or studies upon which the proposed modification is based was not considered by the Board when it designated the beneficial use, and

(C) The proposed modification will not lower the water quality.

(3) If the Board adopts the proposed modification, a summary of the reasons therefor shall be made part of the Board's records regarding such modification.

~~(c) In addition to publishing notice of rulemaking intent in the Oklahoma Register as required by the APA, the Board shall, prior to or within three (3) days after publication of such notice, mail a copy of the notice to all persons who have filed before December 31 of each year a written request for advance notice of rulemaking proceedings for the next ensuing calendar year. Persons who have filed such a request and present comments or otherwise participate in any rulemaking proceedings shall be deemed to have renewed their request to receive such notice for the next calendar year.~~

[OAR Docket #05-795; filed 5-6-05]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

[OAR Docket #05-796]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Permits
785:20-7-2. Contents of regular permits [AMENDED]
Subchapter 9. Actions after stream water right obtained
785:20-9-3. Loss of rights and reversion of water to public [AMENDED]
Subchapter 11. Miscellaneous Provisions
785:20-11-9. Impoundment of water in mine pits [NEW]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. 2001, §105.1 et seq.; 75 O.S. 2001, §250 et seq.
DATES:
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n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The existing rule describing the various kinds of conditions that the Board may place on a regular permit is being amended to provide protection for navigation use of water. The intended purpose of the amendment would be to provide conditions to protect navigation use of water on permits issued after the effective date of the amendment. Another amendment proposed would add a reason that may be acceptable for nonuse of water to avoid a loss (reduction or cancellation) of a water right. The circumstances creating the need for the proposed amendment is the inability to accurately project future need when the permit was issued and expenditure of significant funds for infrastructure that must be made to put water to beneficial use. The additional reason would require the water right holder to show that there had been significant expenditure for infrastructure needed to put the water to use, that the infrastructure has been properly maintained and has the current capacity for use of the water subject to forfeiture, and that lack of actual use of the water is due to lack of demand. The intended purpose of the amendment is to recognize and protect significant investment in infrastructure necessary to put water to beneficial use in the future. A new rule is being proposed to clarify that the filling of an impoundment at a mining site authorized by the Oklahoma Department of Mines is not a use of water requiring a permit provided that such activity does not interfere with downstream domestic and existing appropriative uses. Circumstances, which created the need for a new rule include inquires and questions regarding water in impoundments authorized to be built as part of surface mining activities. The intended affect of the proposed rule is to clarify the permit requirements of the law and oversight activities of the Board relative to impoundments authorized to be created by another state agency, the Oklahoma Department of Mines.

CONTACT PERSON:
Dean A. Couch, General Counsel, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 7. PERMITS

785:20-7-2. Contents of regular permits

Every regular permit issued by the Board shall contain substantially the following:

(1) The stream system name and number;
(2) The county;
(3) Application number and date of filing;
(4) The permit number and date issued, which shall be the date the permit is issued by the Board;
(5) The name and address to whom issued;
(6) The source, amount of water in acre-feet, and maximum rate of withdrawal in gallons per minute;
(7) A legal description of the point or points of diversion to the nearest ten (10) acre subdivision of the legal description;
(8) The purpose of the diversion; and
(9) The area of use or in the case of irrigation, the number of acres to be irrigated and the legal description of same;
(10) A provision making the permit and holder thereof subject to domestic users and existing appropriators;
(11) The time within which construction shall commence and the time within which the water shall be applied to beneficial use;
(12) If an applicant's water lines are to cross a public right-of-way or another landowner's property, it shall be a condition of the permit that the applicant provide, within a reasonable time as determined by the Board, an easement, license, or other evidence that he can cross the right-of-way or another's property in order to put the water to beneficial use;
(13) If the applicant leases the land on which the water is authorized to be used for irrigation, the permit shall expire upon termination of the lease or renewals thereof unless the permit is transferred to the owner of the land within thirty (30) days of the termination of the lease, and that copies of any such lease renewals shall be filed with the Board within thirty (30) days of the effective date of such renewal; ~~and~~
(14) Water released for navigation purposes pursuant to project operations adopted by the United States shall not be diverted; and
(15) Any additional terms, conditions, limitations, or restrictions the Board may prescribe.

SUBCHAPTER 9. ACTIONS AFTER STREAM WATER RIGHT OBTAINED

785:20-9-3. Loss of rights and reversion of water to public

(a) **Forfeiture and loss of rights.** *Nothing in* 82 O.S. 1981, §§105.1 et seq. *shall be deemed to reestablish any right to the use of any water which has been lost by failure to use same or by forfeiture prior to July 5, 1961.* [82:105.16]

(b) **Loss of right to use water under permit.**

(1) *To the extent that the* amount of *water authorized is not put to beneficial use as provided by the terms of the permit* including but not limited to a schedule of use of incremental amounts within the corresponding time periods, the *amount not so used shall be forfeited by the holder of the permit and such unused water shall again become public water and available for appropriation.* [82:105.17]

(2) If a permit authorizes use of water for more than one purpose and water is not used for a purpose under the terms of the permit, the Board may delete such purpose from the permit upon notice and hearing as provided in this section.

(3) If the permittee fails to comply with any material term, limitation, condition or restriction provided in the permit, including but not limited to the requirements to file a Notice of Completion of Works on the date specified, the Board may revoke and cancel said permit upon notice and hearing as provided in this section.

(4) For a permit containing a schedule of use, the amount lost in any increment shall be subtracted from the total amount authorized by the permit and the amounts for any remaining increments shall be adjusted based on the percentages of the time intervals in the schedule of use.

(5) If the water right authorizes use of water from a reservoir, a reduction or cancellation of the right to use water shall not affect the storage rights in the reservoir, and any appropriation permit issued thereafter which authorizes use of water in such storage shall contain a condition that the permittee shall pay to the owner of the storage rights the proportionate amount of the costs of the storage attributable to the permit.

(c) **Loss of right after commencing use.**

(1) *When* any person *entitled to the use of water commences using water but thereafter fails to beneficially use all or any part of the water claimed by him, for which a right of use has been vested for the purpose for which it was appropriated, for a period of seven (7) continuous years,* the right of use of the unused amount of water for such purpose shall be lost and such unused water shall revert to the public *and shall be regarded as unappropriated public water* [82:105.17]; provided however, the application of this paragraph shall not conflict with use under a schedule of use or other terms of a water right. Periods of excused nonuse shall stop the running of the forfeiture period for the period of the excused nonuse and such period shall not be included in computing the forfeiture period.

(2) This subsection is applicable to vested rights and permits to use stream water.

(3) The following shall not be calculated as amounts used in determining whether a loss of right has occurred:

(A) use of water on lands not described in a water right,

(B) use of water for purposes other than that described in the water right,

(C) use of water in a manner that constitutes waste.

(4) If the water right authorizes use of water from a reservoir, a reduction or cancellation of the right to use water shall not affect the storage rights in the reservoir, and any appropriation permit issued thereafter which authorizes use of water in such storage shall contain a condition that the permittee shall pay to the owner of the storage rights the proportionate amount of the costs of the storage attributable to the permit.

(d) **Notice of loss of right to use water.**

(1) **When Board may send notice.** *When the Board has reasonable cause to believe that the right to use water has been lost in whole or in part,... the Board may proceed to cancel administratively such water right by notifying the claimant, or his latest successor in such rights, by written notification mailed by registered or certified mail to his last known address that there is reasonable cause for believing that he has lost his water rights under the provisions of* [82:105.18] 82 O.S. 1981, §§105.16 and 105.17.

(2) **Contents of notice.** Such notice shall contain:

(A) A statement of the time, place, and location of the hearing;

(B) A statement of the nature and of the legal authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular sections of the statutes and rules involved;

(D) A short and plain statement of matters asserted.

(3) **Mailing notice; publication.** The notice must *be mailed at least thirty (30) days prior to the date set for a hearing...*If *there is evidence that delivery of such notice by registered or certified mail cannot be made to the claimant or his successor in such water rights, the Board shall give notice by publishing the same in a local newspaper qualified to publish such notice, nearest the point where said water right had attached, once each week for two (2) consecutive weeks.* [82:105.18] A certified mailing which is returned to the Board and marked "refused" or "unclaimed" is not evidence that delivery cannot be made to the claimant or his successor.

(e) **Hearing on loss of right.**

(1) The hearing date shall be set not earlier than thirty (30) days after the notice by certified mail or the last publication date of the notice.

(2) At the hearing the claimant or his successor shall have the right to show cause why such water right should not be declared to have been lost through nonuse or non-compliance with water right terms, conditions, etc. *Such cause may be shown by substantial competent evidence that the failure to beneficially use the water subject to forfeiture was caused by circumstances beyond the*

control of the claimant and the claimant was ready and willing to use the water. [82:105.18]

(3) In addition to any cause which may be provided by law, acceptable cause for nonuse includes but is not limited to the following:

(A) damage to claimant's field, pump, pipe or other equipment caused by flooding or other events after reasonable diligence to repair same;

(B) claimant's service on active duty in the armed forces;

(C) placement of land to which an irrigation water right is appurtenant into a federally sponsored conservation reserve or soil bank program; ~~and~~

(D) wrongful acts of others which prevented water usable for claimant's authorized purposes from reaching the claimant's point of diversion, and

(E) need for the water did not develop as anticipated when the water right was obtained or when a schedule of use was added or amended, and the water right holder acquired and has properly maintained significant infrastructure (such as lakes, storage rights in lakes, pipelines, pumps and other appurtenances) at a capacity necessary to put the amount of water subject to forfeiture to the use authorized.

(4) In any instances of reported nonuse, the claimant may be required to state the reasons for such nonuse and furnish to the Board sufficient verification and evidence of the reasons, underlying basis or cause for the nonuse.

(f) **Notice of Board's determination on loss of right.** The Board shall notify the claimant, or successor in such water right, of its determination in accordance with the Oklahoma Administrative Procedures Act.

(g) **Failure of Board to determine loss of right.** The *failure of the Board to determine that a right to use water has been lost in whole or in part for nonuse shall not in any way revive or continue the said right.* [82:105.18]

(h) **Voluntary surrender of water rights.** *The Board may accept the voluntary surrender of any water right by the holder thereof.* [82:105.19] Forms for surrender shall be furnished by the Board.

SUBCHAPTER 11. MISCELLANEOUS PROVISIONS

785:20-11-9. Impoundment of water in mine pits.

Unless otherwise required by the Board for purposes of proper administration and accounting of water uses and rights, the impoundment of water in a mine pit as described in a surface mining closure plan approved by the Oklahoma Department of Mines shall not be deemed a beneficial use of water requiring a regular permit, provided that the Board may request that the Oklahoma Department of Mines include conditions and requirements as part of the closure plan to protect downstream domestic and appropriative uses.

[OAR Docket #05-796; filed 5-6-05]

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

[OAR Docket #05-797]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-1. Licensing procedures [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells.
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observations wells, and water well test holes [AMENDED]
785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells, and water well test holes [AMENDED]
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. 2001, §1020.16; 75 O.S. 2001, §250 et seq.

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ANALYSIS:
An amendment proposed would provide for an exemption to the continuing education requirement for renewal of licenses and operator certifications. The circumstances creating the need for the proposed amendment is a request from a long-time well driller who believes there should be an exemption to continuing education requirements based on length of time an operator has been drilling. The intended effect of the amendment is to add such an exemption to the continuing education requirement. The other amendments would allow for high solids bentonite to be mixed with cement grout or utilized without cement grout for sealing certain kinds of new wells, and would allow for high solids grout to be mixed with cement grout or to be used without cement grout for plugging certain wells. The circumstances creating the need for such amendments is the additional experience of well drillers, particularly those on the Well Drillers Advisory Council, that high solids bentonite provides an adequate seal for wells at a reduced cost over cement grout. The intended effect of the proposed amendments is to provide the option to utilize high solids bentonite alone in sealing certain wells

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-2. Definitions

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

"Abandoned well" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial drilling" means *drilling and installation as a business, trade, or occupation for compensation.* [82:1010.1]

"Commercial installation" means *installation as a business, trade or occupation for compensation.* [82:1020.1]

"Commercial plugging" means plugging wells or borings *as a business, trade or occupation for compensation.* [82:1020.1]

"Direct push geological boring" means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

"Drilling water" means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

"Firm" means an individual or any kind of legal entity, such as a sole proprietorship, partnership or corporation that holds a license to conduct any well drilling or pump installation activity.

"Fresh water observation well" means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

"Geotechnical boring" means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

"Geothermal well" means heat pump well.

"Groundwater well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"Heat exchange well" means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

"Heat pump well" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"Heat sink well" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"License" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in ~~weather modification and control operations or~~ the business of drilling or plugging wells or borings and installing water well pumps.

"Monitoring well" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Open-loop heat pump water supply well" means a well drilled to supply water for the purpose of heat transfer.

"Operator" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

"Piezometer" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"Pump" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, and controls.

"Pump installer" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"Sand point well" means a groundwater well with a borehole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small

diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"Site assessment observation well" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"Sleeve" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit. Not to be confused with surface casing or conductor pipe.

"Unsaturated zone monitoring well" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"Vertical closed-loop heat pump well" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"Water return well" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"Water well test hole" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"Well" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"Well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the ~~testing for or~~ test drilling of wells in the State of Oklahoma.

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-1. Licensing procedures

(a) **Who must file and types of certifications.**

(1) All persons engaged in the following categories of activities in this state shall make application for and obtain a license from the Board:

(A) Category 1: commercial drilling or plugging of groundwater wells including test drilling for groundwater, and commercial drilling or plugging of fresh water observation wells;

(B) Category 2: commercial drilling or plugging of monitoring wells and site assessment wells, and drilling or plugging of geotechnical borings;

(C) Category 3: commercial installation of water well pumps;

(D) Category 4: commercial drilling or plugging of wells utilized for heat exchange purposes including but not limited to the following:

(i) heat exchange wells; and

(ii) geothermal wells.

(2) The license issued by the Board shall indicate on its face each category and specific activity or activities as described in (a)(1) of this section for which the licensee is certified to perform and conduct.

(3) Each licensed ~~person~~ firm shall have at least one operator who may also be the licensee. Each operator shall be required to obtain a certification from the Board. An operator shall not conduct types of activities not authorized for the licensee under whom the operator works.

(4) To engage in activities for which certification is required, operators shall also have a valid license or shall be certified as an operator for a person having a valid license. An ~~operators~~ operator's certification by itself shall not constitute proper authority to engage in activities for which licensing is required.

(5) Reconditioning of wells as a trade, business or occupation for compensation shall be considered commercial drilling.

(6) No license shall be required for any person who installs vapor observation wells within the excavation of newly installed underground tank systems, provided that the bottom of the vapor observation well does not intercept the groundwater table and is above the historic high water table level in the area, and provided further that such vapor wells shall be constructed to meet or exceed the minimum standards for the construction of monitoring wells which are located in the unsaturated zone of aquifer.

(b) **Application requirements for license.**

(1) Any person who intends to conduct any of the activities listed in 785:35-3-1(a)(1) must complete and file a verified application for license and activity certification on forms provided by the Board.

(2) The license applicant shall submit the following with the application:

(A) verification of at least two (2) years qualified experience in the activity or activities for which certification under the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required qualified experience;

(B) a list of all well rigs and equipment used or to be used in conducting the activities for which certification under license is sought;

(C) the license fee for each activity for which certification under the license is sought;

(D) the indemnity fund fee for each category of activity for which certification under the license is sought;

(E) the examination fee.

(3) Applicants who are partnerships, corporations or other entities that are not individuals shall additionally provide the following with the application:

(A) designation of one contact person who shall be an official properly authorized to act for the partnership, corporation or other entity ~~and who shall be a certified operator~~;

(B) authorized signature of the contact person who shall execute and verify the application;

(C) a list of all persons employed who intend to become duly certified operators for the partnership, corporation or other entity.

(c) **Application requirements for operator certification.**

(1) Any individual who intends to conduct any of the activities listed in 785:35-3-1(a)(1) for any person who obtains a license pursuant to these rules must complete and file an application for an operator certification on forms supplied by the Board, provided however, one operator certification shall be issued with the license to the licensee.

(2) The applicant for an operator certification shall submit the following with the application:

(A) verification of at least one (1) year of qualified experience in the activity or activities for which the operator certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required qualified experience;

(B) the operator certification fee;

(C) the examination fee.

(d) **Completion of application and notification.**

(1) Any application for license or operator certification not completed within six (6) months from the date of receipt shall be cancelled and fees submitted therewith forfeited.

(2) Upon receipt of a properly completed application and all items required to be submitted, the Board shall inform said applicant of the dates, times, and places of the examination for which he is eligible.

(e) **Administration and procedures relating to examination.**

(1) Upon notification of the dates, times, and places of examinations, the applicant shall notify the Board of the date, time, and place the applicant will be present to take the examination relating to the activities listed in 785:35-3-1(a)(1) for which the license or operator certification is sought. There shall be four (4) kinds of examinations:

(A) an examination relating to groundwater wells and fresh water observation wells,

(B) an examination relating to monitoring wells, site assessment observation wells, and geotechnical boring,

(C) an examination relating to pump installation activities, including but not limited to related electrical work performed from the output side of a fused disconnect or breaker box, and

(D) an examination relating to heat exchange wells.

(2) The applicant shall not be allowed to confer with any other person or refer to outside materials for answers to examination questions.

(3) After completion of the appropriate examination(s) within a reasonable time, the Board shall grade the examinations and pass upon qualifications of applicants for licensing and certification.

(4) An applicant, at any time within 30 days of the date he is notified of the results of an examination, may inspect his or her examination paper in the offices of the Board during the normal business hours for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

(5) Any applicant who fails an examination will be promptly notified by the Board. After a minimum time period of thirty (30) days, and if a subsequent examination is scheduled between the date of notification and the six (6) months expiration period of the application, the applicant may request to take the subsequent examination but must pay the appropriate examination fee each time the applicant requests to take the examination.

(f) **Issuance of license.**

(1) Upon acceptance of the applicant's qualifications the Board will issue the license with appropriate category and activity certifications to the applicant along with the required operator certifications.

(2) No license and no operator certificate shall be issued to any person who has not been a resident of the State of Oklahoma for at least ninety (90) days prior to the date of issuance of the license, unless the reciprocity provisions for nonresidents as set forth in (B) of this paragraph apply.

(A) The applicant for a license or operator certificate as the case may be, shall submit written verification of Oklahoma residency as required in this subsection.

(B) The Board may waive the ninety (90) day residency requirement as outlined in this subsection for any nonresident of the State of Oklahoma if the nonresident's particular state, territory, or possession of the United States extends similar privileges to the persons licensed under the provisions herein. If the applicant's state of residency has a licensing requirement, then the nonresident must be licensed and in good standing in that state. The license fees charged to a nonresident applicant shall be at least equal to the fees charged for similar nonresident license by the state, territory, or possession of the United States in which the applicant is a resident, but in no case shall the fee be less than four hundred dollars ($400.00).

(g) **Changing the designation of license or moving an operator certification.**

(1) Any individual licensee may request modification of the license designation to that of a partnership, corporation or other legal entity. The Board shall approve the request and issue a modified license after the following conditions are met:

(A) the licensee holds an active valid license;

(B) the licensee gives written notice of the request to the Board;

(C) the licensee provides the name of the contact person who is an official properly authorized to act for the partnership, corporation or other entity;

(D) a list of all persons employed by the partnership, corporation or other entity who are or intend to become duly certified operators.

(E) payment of fee(s) required for change of license and any new operator certifications.

(2) An operator who has obtained a certification to drill under the license of a partnership, firm, or corporation can

transfer that certification to another partnership, firm, or corporation on the following conditions provided that an operator cannot conduct activities during any period that he is not associated with a licensee, and provided further that an operator certification will not be renewed unless the operator is associated with a licensee:

(A) the transfer fee is submitted to the Board with the transfer request, and

(B) the operator associates with the new licensee within thirty (30) days, or has provided notice to the Board of his current address within thirty (30) days after leaving the previous licensee.

(h) **Adding activities to be certified under license or operator certification.**

(1) A licensee or certified operator may request to add activities to be certified under the license or operator certification.

(2) The Board shall consider approval of request after the following conditions are met:

(A) verification of at least two (2) years qualified experience in the additional activity or activities for which the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required experience; verification of at least one (1) year qualified experience in the additional activity or activities for which certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required experience;

(B) submittal of an update of the list of rigs or other equipment to be used in the additional activity or activities;

(C) submittal of the additional license or operator certification fee;

(D) submittal of the additional indemnity fund fee;

(E) submittal of the examination fee;

(F) passing the examination.

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(b) **Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) 50 feet from all other pollution sources, provided however, if the well is located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection.

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he

shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least eight (8) inches above the natural ground level or preferably twelve (12) above the natural ground level or eight (8) inches above the floor surface for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding.

(E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel, or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

(i) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and

(ii) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, and the surface seal shall be a minimum of one and one-half inch ($1\frac{1}{2}$") thick.

(2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper than four feet (4') from the natural land surface after all settling of the cement or bentonite/cement has occurred, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of six percent (6%) bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout <u>or cement/bentonite</u> to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

<u>(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain at a minimum, twenty percent (20%) solids by dry weight.</u>

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all monitoring wells, including site assessment observation wells and unsaturated zone monitoring wells, and geotechnical borings, whether constructed by a person having a valid license or by any other person.

(2) **Construction.** Monitoring wells and geotechnical borings shall be constructed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the ground around the casing or boring, by entering the wells or boring, or by entering the fresh groundwater from pollution sources below the ground.

(A) **Drilling equipment.** Drilling equipment shall be decontaminated if contamination is encountered in the well or borehole.

(B) **Drilling procedures.** Drilling procedures shall be carried out in such a manner that will prevent or minimize contamination.

(C) **Construction material.** All construction material shall be in a condition that will prevent or minimize contamination.

(3) **Proper maintenance and plugging.** The driller and the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources and to see that unused wells and boring are properly plugged.

(4) **Other regulations.** These rules are minimum standards and other laws and regulations which are more stringent may be applicable.

(b) **Minimum standards for construction of monitoring wells.**

(1) **Diameter of borehole.**

(A) The diameter of boreholes for monitoring wells, with the exception of boreholes for unsaturated zone monitoring wells, shall be at least three inches greater than the nominal diameter of the well casing and screen for the entire length of the casing.

(B) The diameter of boreholes for unsaturated zone monitoring wells shall be at least one and one-half (1 1/2") inches greater than the nominal diameter of the well casing for the entire length of the casing. ~~In addition, the total depth of the hole shall not exceed 20 feet.~~

(2) **Casing selection and casing joints.**

(A) All wells shall be cased. Casing material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations.

(B) When PVC casing is used, the casing shall meet or exceed the standard dimension ratio (SDR) of twenty-one (21).

(C) The minimum diameter for monitoring well casing shall be a nominal two (2) inches, with the exception of casing for unsaturated zone monitoring wells. The minimum diameter for unsaturated zone monitoring well casing shall be a nominal one-half inch. Methane gas probes at solid waste management sites shall be exempt from minimum casing diameter requirements.

(D) The casing shall be connected by flush threaded joints or have the ability to be connected by another mechanical method that does not introduce pollutants into the well. Glued joint casing shall not be used when monitoring organics.

(E) The casing joints shall be made water tight by a method that does not introduce pollutants into the well (e.g. wrapping the casing joint with Teflon tape or placing an o-ring or gasket in the joint).

(3) **Bottom cap required.** A bottom cap shall be installed on each monitoring well.

(4) **Screen selection and setting.**

(A) All wells shall be screened and screen material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations.

(B) The well screen shall be wire wrapped or factory slotted. Well screens shall not be field slotted.

(C) Slot size shall be selected to prevent or minimize infiltration of the filter pack through the well screen.

(D) Screens shall be of sufficient length to detect, monitor or otherwise describe the contaminant plume according to site specific conditions (e.g. seasonal water level fluctuations). Screen length shall be determined so that commingling of fluids from separate groundwater zones does not occur.

(E) Screen joints shall be placed in the well in such a manner as not to interfere with the accurate investigation of the groundwater quality.

(5) **Filter pack selection and placement.**

(A) All wells shall ~~be~~ have a filter pack and aggregates used for filter pack shall consist of uncontaminated quartz sand, silica or other material that will not affect the groundwater quality.

(B) Filter pack shall be selected to prevent or minimize infiltration of the geologic formation (e.g. fines migration or sand buildup).

(C) Filter pack shall extend two (2) feet above the top of the screen unless such extension would allow vertical communication of pollution through the filter pack.

(D) Filter pack shall be placed in the annulus of the well in such a manner that bridging of the filter pack material will not occur.

(E) When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the filter pack shall extend a minimum of 0.5 feet above the top of the screen.

(6) **Sealing requirements.** Requirements for proper filter pack sealing, annular sealing and surface sealing for monitoring wells shall be as follows:

(A) **Sealing material.** All sealing materials shall be compatible with ambient geological, hydrogeological and climatic conditions, as well as any man-induced conditions anticipated to occur during the life of the monitoring well. Any cement used as a sealant shall be equivalent to or have the same properties as ASTM C-150 cement types I-V (commonly known as Portland cement).

(B) **Filter pack seal.** A minimum of two (2) feet of uniformly sized particles of sodium bentonite pellets or granules of no less than 0.25 inches and no more than 0.75 inches in size shall be placed immediately over the filter pack in each site assessment observation well or monitoring well.

(C) **Annular seal.** The annular space above the filter pack seal shall be filled with a cement grout, bentonite grout, bentonite chips or a cement/bentonite grout mixture to within two (2) feet of the surface. The cement grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water. A maximum of twenty percent (20%) bentonite by dry weight may be added to the cement grout to form the cement/bentonite grout mixture. The bentonite shall be prehydrated to the manufacturer's recommended consistency. The bentonite grout shall be a high solids bentonite grout with at least twenty percent (20%) bentonite by dry weight. The bentonite shall be mixed according to the manufacturer's recommended consistency.

(D) **Surface seal.** A concrete or cement grout surface seal shall be placed around the casing immediately above the annular seal from a depth of two (2) feet to land surface.

(E) **Tremie requirements for grout.** When the placement of grout will exceed twenty (20) feet, the grout shall be placed in the annulus of the well through a tremie pipe and filled or pumped from the bottom upward.

(F) **Multiple cased or screened wells.** No adjacent or collinear casing~~s~~ in the same borehole shall be allowed. No multiple screened intervals in the same casing shall be allowed. Wells shall be drilled with sufficient distances between them so as to prevent the commingling of aquifer zones.

(G) **Special annular, filter pack, and surface seal conditions.** When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the required depths set forth in C and D above for the filter pack and annular seals shall be reduced to fill the annular space from the top of the filter pack materials to the bottom of the cement surface seal. The surface seal shall extend a minimum of one (1) foot below land surface.

(7) **Surface pad requirements.**

(A) A concrete or cement surface pad shall be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick.

(B) The surface pad shall be sloped so to insure that all surface water flows away from the well.

(C) The surface pad is not required if the well is completed in competent concrete or asphalt paving, or if the well is an unsaturated zone monitoring well or a site assessment well that is located in a proposed solid waste disposal site and neither is used for a period exceeding one (1) year.

(8) **Top cap requirements.**

(A) A threaded or flange cap or compression seal shall be installed upon completion of the well to prevent unauthorized use of the well (e.g. tampering with the well or the entrance of foreign material into the well).

(B) The cap or seal shall have the capability of being locked if the well is flush mounted and the well protector is not capable of being locked.

(9) **Monitoring well and site assessment observation well protection.** Protection shall be provided for the casing of monitoring wells or site assessment observation wells by either of the following methods:

(A) An aluminum or steel surface casing shall be set a minimum of 12 inches through the cement or concrete surface pad and shall extend a minimum of

24 inches above the pad or ground. The top of the protective casing shall be fitted with a locking cap and shall be marked to clearly identify the well as a monitoring well or site assessment observation well; or

(B) If flush mounting is required, then the well shall be completed with a well protector that is capable of supporting vehicular traffic. The well protector shall be raised a minimum of one-half (1/2) inch above the surface pad or paving and shall be clearly marked to identify the well as a monitoring well or site assessment observation well. The surface seal shall be sloped so that surface water flows away from the well protector and the bond between the well protector and the removable cover shall be made watertight.

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes

(a) **Temporary capping.** When a groundwater well or fresh water observation well is temporarily removed from service, the top of the well casing will be properly sealed with a pitless adapter cap, sanitary well seal, or well casing cap that cannot easily be removed. A new well shall be properly capped before the well driller leaves the drilling site.

(b) **Time for plugging or completing water well test holes.** Water well test holes shall be properly plugged as provided in this section by the well driller within three (3) days after the completion of testing or such test holes must be completed as water wells, including the installation of surface casing and cement seals, within three (3) days after the completion of testing, unless an extension of time is granted by the Board. The three (3) day period for plugging or completion may be extended by the Board upon request from the well driller. Such request must be submitted prior to the end of the three (3) day period. The multi-purpose completion report shall be submitted to the Board within sixty (60) days after plugging of each water well test hole.

(c) **Permanent abandonment.** The following plugging requirements apply if a groundwater well, fresh water observation well, heat exchange well or water well test hole is permanently abandoned, was drilled by a person not holding a valid license or operator certification from the Board, or if the Board determines that the well or test hole was not drilled or completed in compliance with the applicable minimum standards set forth in this Chapter or may otherwise allow pollution to groundwater.

(1) The well driller shall be responsible for plugging the well or test hole if the well drilling equipment is on the drilling site. If a well is abandoned after the well drilling equipment has been removed from the drilling site, the owner of the land where the well or test hole is located shall be responsible for plugging.

(2) If the well or test hole is uncontaminated and unless paragraph 3 or paragraph 5 below applies, fill such well or water well test hole with uncontaminated, compacted drill cuttings and/or uncontaminated surface clay, cement, bentonite pellets or granules, or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout to within fourteen (14) feet of the land surface, and a minimum of ten (10) feet of the annular space and interior of the well casing shall be filled with cement grout to at least four (4) feet below the land surface.

(3) To plug uncontaminated groundwater wells, fresh water observation wells, or heat exchange wells in the alluvium and terrace deposits of the Arkansas, Cimarron, Salt Fork of the Arkansas, North Canadian, Canadian, Washita, North Fork of the Red, Salt Fork of the Red River, Red River, and other streams or rivers authorized by the Board, fill the well with clean, uncontaminated silica sand to within sixteen (16) feet of the land surface, then two (2) feet of bentonite pellets or granules shall be placed on the uncontaminated silica sand, and finally, a minimum of ten (10) feet of cement grout shall be installed in the annular space and interior of the well casing to at least four (4) feet below the land surface.

(4) Hand dug water wells shall be filled with uncontaminated surface clay or grout to within six (6) feet of land surface. The lining of the well shall be removed from the top five (5) feet and a minimum of two (2) feet of cement grout shall be installed. The top four (4) feet shall be filled with compacted uncontaminated native soil, unless otherwise directed by the Board.

(5) If the well or water well test hole is contaminated, or if the well or test hole is located at an underground tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, the casing shall be removed or perforated from the bottom of the casing to twenty (20) feet below land surface. The casing shall be removed from twenty (20) feet below land surface to the surface, then the well or test hole shall be plugged with cement grout from the bottom to within four (4) feet below the land surface. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to the land surface.

785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings

(a) **Monitoring wells and site assessment observation wells.** Monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site

assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present or was previously present in the well and the top of the screen is less than 20 feet below land surface, overdrilling of the well is required. ~~the~~ The casing shall be removed or drilled out and ~~. Overdrilling of the casing of the monitoring well is required when plugging monitoring wells. The~~ the same size auger used to drill the borehole or larger shall be used to drill out the casing and associated seals, annular space and filter pack. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface or to land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) **Geotechnical borings except direct push geotechnical borings.** Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings, uncontaminated surface clay, cement, and/or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) **Direct push geotechnical borings.** Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface.

(d) **Cement grout requirements.** If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located.

[OAR Docket #05-797; filed 5-6-05]

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

[OAR Docket #05-798]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
785:46-1-2. Definitions [AMENDED]
785:46-1-4. Testing procedures [AMENDED]
Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
785:46-9-2. Applicable mineral criteria [AMENDED]
Subchapter 15. Use Support Assessment Protocols
785:46-15-3. Data requirements [AMENDED]

785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-8. Assessment of Agriculture support [AMENDED]
785:46-15-10. Nutrients [AMENDED]
Subchapter 17. OWRB Water Quality Standards Implementation Plan
785:46-17-3. Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses [AMENDED]

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

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ANALYSIS:
Oklahoma Administrative Code ("OAC") Section 785:46-1-2 has been amended to add a definition for the terminology "naturally occurring conditions" which is used in several rules throughout OAC 785:46; to add definitions for the terms "event mean concentration" and "storm event" which are used in new language adopted in 785:46-15-10(h); and to change the format of some equation terms. The Office of the Oklahoma Attorney General has commented that "naturally occurring conditions" should be defined to clarify applicability of rules in OAC 785:46-15. In addition, new language has been adopted in OAC 785:46-15-10 for assessing conditions in Oklahoma Scenic Rivers; this new language includes certain terms which need to be defined. Finally, there are several equation terms which are inappropriately formatted in 785:46-1-2 and these formats need to be corrected. The intended effect of the amendments of 785:46-1-2 is to clarify the applicability of "naturally occurring conditions" in rules in OAC 785:46-15, to provide definitions of terms adopted for assessing conditions in Oklahoma Scenic Rivers, and to correct the format of certain equation terms.

OAC 785:46-1-4 has been amended to add language allowing testing procedures to include additional practices. The circumstance which created the need for this amendment is that the current language is unduly restrictive. The intended effect of this amendment is to update allowable methods and to clarify authorities designated to approve testing methods.

OAC 785:46-9-2 has been amended to add references for criteria for chlorides, sulfates and total dissolved solids. The circumstance which created the need for these amendments is that the implementation language found in OAC 785:46 does not reflect the same latitude for determination of background as do certain rules in OAC 785:45. The intended effect of this amendment is to allow state environmental agencies latitude in determining natural background conditions consistent with that specified in OAC 785:45, thereby creating a more accurate determination of beneficial use support.

OAC 785:46-15-3 has been amended pertaining to data collection and analysis for the purpose of determining use support, in response to a request from an interested person to delete language allowing "widely-accepted and peer-reviewed methods" other than the testing procedures provided in 785:45-1-4. This amendment of 785:46-15-3 is needed, and the intended effect would be to clarify what additional testing procedures are permissible for purposes of determining use support.

OAC 785:46-15-3 has also been amended: (1) to extend spatial and temporal requirements to observations and other data to be used in addition to samples, (2) to provide exceptions for the general rule requiring a minimum of 10 samples, and (3) to provide clarifying language that quality assurance methods must protect the integrity of the sample and provide documentation of the analysis. The circumstances which created the need for these amendments are (1) an absence of specific temporal and spatial requirements preventing inappropriate use of observations and other data for assessment within this subchapter, (2) the general rule requiring a minimum of 10 samples inappropriately applies to biological collections required for subsections (e), (h), (i), (j), (k), (l), and (m) of 785:46-15-5, and (3) further need for clarifying language that quality assurance methods must protect the integrity of the sample and provide documentation of the analysis. The intended effects of these amendments are (1) to extend spatial and temporal requirements to observations and other data to be used in addition to samples to prevent inappropriate use of such information, (2) to provide exceptions for the general rule requiring a minimum of 10 samples for biological collections, and (3) to ensure quality assurance methods are in place to protect the integrity of the sample and provide documentation of the analysis.

OAC 785:46-15-5 has been amended to provide special rules for determining beneficial use support in wadable streams in the Central Great Plains ecoregion. The circumstance which created the need for these amendments is the inability to measure directly the support for aquatic life beneficial uses in these streams. The intended effect of these amendments is to create an ability to measure aquatic life use support in the specified streams.

OAC 785:46-15-8 has been amended to change the test for total dissolved solids from 750 to 700 mg/L in determining whether the Agriculture beneficial use is supported. The circumstance which created the need for this amendment is that a typographic error has been discovered that creates a conflict between OAC 785:45 and 785:46. The intended effect of this amendment is to provide consistency in the rules in these two chapters.

OAC 785:46-15-10 has been amended to add language providing special rules for determining whether the designated beneficial use of Aesthetics is supported in Scenic Rivers with respect to the criterion for total phosphorus. The circumstance which created the need for these amendments is that the adoption of a numerical criterion to protect the Aesthetics beneficial use requires specific language to determine how ambient data should be assessed for determining beneficial use support. The intended effect of these amendments is to provide specific language to assess the Aesthetics beneficial use for Scenic Rivers with respect to the total phosphorus criterion in lieu of the inappropriate default assessment protocol.

OAC 785:46-17-3 has been amended to add language in the OWRB's Water Quality Standards Implementation Plan. These amendments explain the processes used by the OWRB in some of its loan and grant programs to ensure compliance with anti-degradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses. The circumstance which created the need for these amendments is the periodic review and revision of the OWRB's Water Quality Standards Implementation Plan as required by 27A O.S. Section 1-1-202(B). The intended effect of these amendments is to make OAC 785:46-17-3 consistent with both the changes made to the OWRB's Water Quality Standards Implementation Plan, as well as the current procedures being used in the OWRB's loan and grant programs.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S., §§ 1085.2 and 1085.30, and 27A O.S., §§ 1-1-202 and 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 45.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

785:46-1-2. Definitions

In addition to definitions of terms found in OAC 785:45-1-2, 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 mth 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 concentration" means the concentration not attributable to the effluent at the point of maximum concentration on the mixing zone boundary.

"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 Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"C" means maximum concentration on the mixing zone boundary.

~~**"C95"**~~ **"C_{95}"** means the 95th percentile maximum likelihood concentration.

~~**"Cb"**~~ **"C_b"** means background concentration.

~~**"Ce"**~~ **"C_e"** means effluent concentration.

"cfs" means cubic feet per second.

~~**"Cmean"**~~ **"C_{mean}"** means the geometric mean of all effluent concentrations analyzed for the toxicant.

~~**"Ct"**~~ **"C_t"** means the appropriate criterion listed in OAC 785:45.

"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.

"Discharge to a lake" means a discharge within the lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, excluding discharges to lock and dam reservoirs.

"Discharge to a stream" means (1) any discharge outside the normal pool elevation of a lake as such elevation is listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, and (2) any discharge to a lock and dam reservoir, such as Webbers Falls Reservoir and Robert S. Kerr Reservoir.

"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.

"HQW" means high quality waters as defined in OAC 785:45-3-2(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, HQW, 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 785:45.

"LC50" means the lethal concentration as defined in OAC 785:45-1-2.

"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 785:45-1-2.

"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 785:45-3-2(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.

~~**"Qe"**~~ **"Q_e"** means the regulatory effluent flow.

~~**"Qel"**~~ **"Q_{el}"** means long term average effluent flow.

~~**"Qes"**~~ **"Q_{es}"** means short term average effluent flow.

~~**"Qu"**~~ **"Q_n"** means the regulatory receiving stream flow.

"Regulatory mixing zone" means the volume of receiving water described in 785:45-5-26.

"Reasonable potential factor" means the 95th percentile maximum likelihood estimator for a lognormal distribution.

"SS" means sample standard as defined in OAC 785:45-1-2.

"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.

"T'" means maximum temperature difference at the edge of the mixing zone boundary.

~~**"Ta"**~~ **"T_a"** means regulatory ambient temperature.

~~**"Tc"**~~ **"T_c"** means the temperature criterion.

~~**"Tf"**~~ **"T_f"** means the 95th percentile maximum observed effluent temperature.

"TDS" means total dissolved solids at 180°C.

"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 x Ln(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.

"WET" means whole effluent toxicity.

"YMS" means yearly mean standard as defined in OAC 785:45-1-2.

785:46-1-4. Testing procedures

All methods of sample collection, preservation, and analysis used in implementing OAC 785:45 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 procedures approved by the Oklahoma Laboratory ~~Certification~~ 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 785:46-15-3(a) and (g).

SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE

785:46-9-2. Applicable mineral criteria

(a) General. OAC 785:45 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 785:45 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 785:45-5-13 or (a) of 785:46-9-2 shall be the criteria for chlorides, sulfates and TDS to protect the Agriculture beneficial use.

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

785:46-15-3. 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 785:45-1-4 or ~~other widely-accepted and peer-reviewed methods~~ practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with 785:46-15-3(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 a 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. ~~Samples~~ 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. Except for circumstances in which 785:46-15-4(b)(3) or 785:46-15-4(c)(3) applies, data more than five years old shall not be utilized in assessing use support for a stream unless no data exists for the preceding five year period.

(3) Lakes. Except for circumstances in which 785:46-15-4(b)(3) or 785:46-15-4(c)(3) applies, data more than ten years old shall not be utilized in assessing use support for a lake unless no data exists for the preceding ten year period.

(d) **Minimum number of samples.**

(1) Streams. Except when (f) of this Section or any of subsections (e), (h), (i), (j), (k), (l), or (m) of 785:46-15-5 applies, a minimum of 10 samples shall be required to assess beneficial use support due to field parameters including but not limited to DO, pH and temperature, and due to routine water quality constituents including but not limited to coliform bacteria, dissolved solids and salts. Analyses may be aggregated to meet the 10 sample minimum requirements in non-wadable stream reaches that are 25 miles or less in length, and in wadable stream reaches that are 10 miles or less in length, if water quality conditions are similar at all sites. Provided, a minimum of 10 samples shall not be necessary if the existing samples already assure exceedance of the applicable percentage of a prescribed screening level.

(2) **Lakes.** Except when (f) of this Section applies, a minimum of 20 samples shall be required on lakes of more than 250 surface acres to assess beneficial use support due to water quality parameters including but not limited to DO, pH and temperature. A minimum of 20 samples shall likewise be required on such lakes for other routine water quality constituents including but not limited to coliform bacteria, chlorophyll a, and dissolved solids. A minimum of 10 samples shall be required on lakes or arms of 250 surface acres ~~of~~ or less. Samples may be aggregated to meet the minimum requirements of this paragraph.

(3) Toxicants. Notwithstanding any other provision of this Subchapter, a minimum of five samples shall be required to determine that a beneficial use is supported with respect to all toxicants in water. A determination that a beneficial use is partially supported or not supported with respect to toxicants may be made upon less than five samples. Samples may be aggregated consistent with the spatial and temporal requirements prescribed in (b) and (c) of this Section in order to satisfy the minimum sample requirement of this paragraph. Additional samples for the calculation of pH and hardness dependent acute and chronic criteria shall be collected as required by OAC 785:46-5-8.

(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 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 ~~Propogation~~ 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 ~~include protections for sample~~ protect the integrity of the sample and ~~the documentation of details on analysis methodologies~~ provide detailed documentation of analysis.

785:46-15-5. 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 785:45 for a waterbody is supported.

(b) Dissolved oxygen.

(1) Screening levels for DO in streams.

(A) Screening levels for DO in habitat limited aquatic communities shall be 4.0 mg/L from April 1 through June 15 each year and 3.0 mg/L for the remainder of the year.

(B) Screening levels for DO in warm water aquatic communities shall be 4.0 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(C) Screening levels for DO in cool water aquatic communities and trout fisheries shall be 5.0 mg/L from June 1 through October 15 each year and 6.0 mg/L for the remainder of the year.

(2) Screening levels for DO in lakes.

(A) If greater than 70% of the water column at any given sample site in a lake or an arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(B) If 50% or more, but not greater than 70%, of the water column at any given sample site in a lake or arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be partially supported.

(C) The screening level for surface DO in a lake or arm of a lake shall be 4 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(3) Support tests.

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to the DO criterion if no more than 10% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section and such result is due to other than naturally occurring conditions.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to the DO criterion if greater than 10% but less than 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(C) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to the DO criterion if at least 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(c) Toxicants.

(1) 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 or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and (G) and 785:45 Appendix G, Table 2.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to any individual toxicant parameter if more than one but not greater than 10% of the sample concentrations from the waterbody exceed

the acute or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and (G) and 785:45 Appendix G, Table 2.

(3) 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 greater than 10% of the sample concentrations from that waterbody exceed the acute or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and (G) and 785:45 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 natural causes if no more than 10% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to pH occurring other than by natural causes if greater than 10% but less than 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(3) 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 natural causes if at least 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(e) Biological criteria.

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 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 (h) through ~~(l)~~ (m), 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.

(f) Turbidity. The criteria for turbidity stated in 785:45-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default protocol in 785:46-15-4(b).

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(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.

(l) 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.

(m) **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 this ecoregion if 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 undetermined. 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.

785:46-15-8. 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 785:45 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 chlorides, sulfates and TDS if the mean of all chlorides, sulfates and TDS sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45. Provided, if the TDS sample concentrations are less than ~~750~~ 700 mg/L and the chlorides and sulfates are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to those substances.

(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be partially supported with respect to chlorides, sulfates and TDS if the mean of all chlorides, sulfates and TDS sample concentrations from that waterbody does not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and more than 10% but less than 25% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45.

(3) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to chlorides, sulfates and TDS if the mean of all chlorides,

sulfates and TDS sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F of OAC 785:45, or at least 25% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45, or both such conditions exist.

(c) Use of site specific data. If the appropriate state environmental agency determines that the stream segment averages prescribed in Appendix F of OAC 785:45 are not appropriate for the entirety of a given stream segment, 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.

785:46-15-10. Nutrients

(a) General. OAC 785:45-3-2(c) prohibits water quality degradation by nutrients which will interfere with the attainment or maintenance of any existing or designated beneficial use. OAC 785:46-13-3(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 Carlson's Trophic State Index 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 in a lake. If it is demonstrated that nutrient loading in a lake may be adversely impacting a beneficial use designated for that waterbody, then the Board may determine

that the lake and its watershed is an NLW, and shall identify the lake and watershed as NLW in Appendix A of OAC 785:45.

(e) Consequence of identification as NLW; results of study. If a lake or its watershed is identified as NLW in Appendix A of OAC 785:45, then the Board or other appropriate state environmental agency may cause an NLW Impairment Study to be performed. The beneficial uses designated for lakes identified in OAC 785:45 Appendix A as NLW shall be presumed to be fully supported but threatened, unless an NLW Impairment Study demonstrates that the uses are partially supported or not supported; provided, if an NLW Impairment Study demonstrates that the uses are not threatened, then the Board 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 NLW Impairment Study if a lake or an impairment study if a stream must be completed by the appropriate state environmental agency.

(g) Result of impairment study.

(1) Impaired or threatened. If, independent of or in addition to the process set forth in (b) of this Section, an impairment study of a waterbody demonstrates that a waterbody is impaired or threatened by nutrients, then the appropriate state environmental agency shall initiate the appropriate listing procedure developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

(2) Not threatened nor impaired. If, independent of or in addition to the process set forth in (b) of this Section, an impairment study of a waterbody demonstrates that a waterbody is neither threatened nor impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate de-listing procedure developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

(h) **Special provisions for Scenic Rivers.**

(1) **Scope and applicability.** This subsection (h) shall be used to determine whether the beneficial use of Aesthetics designated for a segment of a Scenic River is supported with respect to the criterion of total phosphorus.

(2) **Data and procedure.**

(A) The data used shall satisfy all of the requirements of 785:46-15-3 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 (h)(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 (h)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

SUBCHAPTER 17. OWRB WATER QUALITY STANDARDS IMPLEMENTATION PLAN

785:46-17-3. Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses

(a) In the course of determining applications for stream water permits, the Board evaluates or calculates runoff data, available stream gauge data, lake storage volumes and dependable yield data for reservoirs, and the watershed above the proposed diversion point. The Board protects against degradation by appropriating no more than the mean annual flow of a stream. After July 1, 2000, the Board will also evaluate whether an application will cause a potential impact on beneficial uses.

(b) In the course of determining maximum annual yields of groundwater basins, the Board assumes 100 percent development within the basin; this ensures a longer basin life because current basin development is typically less than 20 percent of the entire basin. The maximum annual yield procedure also identifies potential sources of contamination within the basin. The basin studies will further determine the level of decline in storage in the basin which could impact historic low base flow discharge such that flow in that stream could potentially begin to be reduced due to groundwater withdrawals. In the course of determining applications for groundwater permits where the maximum annual yield has been determined, the Board protects against degradation by limiting the permitted withdrawal to the maximum annual yield allocated to the land covered by the permit, and avoiding withdrawal that would cause contaminated groundwater or surface water to be moved into groundwater that is not already contaminated.

(c) The Board's Clean Water SRF loans for construction of projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) ~~All requested point source wastewater projects are placed on a five-year priority list and funded in order of priority. Treatment plants for discharges receive greater priority than collection system improvements; priority is given for effluent quality characteristics; priority points are given when a discharge permit is being violated and the discharger is under an enforcement order; and priority points are given to projects located on a stream identified on the State's 303(d) List as impaired~~ The Clean Water SRF Integrated Priority Ranking System ranks projects for funding based on human health protection, the "fishable/swimmable" goals of the Clean Water Act, the WQS, and Oklahoma's Nonpoint Source Management Program led by the Oklahoma Conservation Commission. All projects are placed on a five-year Clean Water SRF Project Priority List and funded in priority order. Proposed projects receive points based on the four major factors of project type, water quality restoration, water quality protection, and readiness to proceed, all as provided in 785:50-9-23.

(2) The project is evaluated for its ability to meet discharge permit limits in satisfaction of water quality standards, and any mitigative measures necessary to protect the beneficial uses of the receiving waters.

(3) The funding recipients are required to construct the projects in accordance with plans and specifications approved by DEQ and the Board. The recipients are required to employ a full time resident inspector. The projects are periodically inspected by the Board staff during construction, and upon completion are subjected to a final Board inspection for compliance with construction and discharge standards.

(d) The Board's ~~other~~ loans ~~and grants~~ from revenue bond proceeds for construction of ~~wastewater~~ projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the ~~same~~ following procedures ~~as stated in (c)(2) and (c)(3) of this Section~~:

(1) **Pre-approval procedures.** Sections 785:50-7-1 and 785:50-7-2 of the OAC provide general rules and criteria for review and approval of proposed bond loan projects. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656.

(2) **Procedures following approval.** After a revenue bond loan project is approved by the Board, it is monitored to assure it is constructed in accordance with planning documents and plans and specifications approved by the Board and DEQ. Loan recipients are required to employ a full time resident inspector to monitor and record construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(e) The Board's emergency grants for construction of projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Section 785:50-7-5 of the OAC provides a priority system which ranks proposed emergency grant projects for review and approval according to certain factors and criteria. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656.

(2) **Procedures following approval.** After an emergency grant project is approved by the Board, it is monitored to assure it is constructed in accordance with plans and specifications approved by the Board and DEQ. Emergency grant recipients are required to employ a full time resident inspector to monitor and record construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(f) The Board's Rural Economic Action Plan (REAP) Grant Program for construction of projects complies with antidegradation standards and leads to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Sections 785:50-8-3 and 785:50-8-4 of the OAC provide general rules and criteria for review and approval of proposed REAP projects, while Section 785:50-8-5 provides a priority system

which ranks proposed REAP grant projects according to certain factors and criteria. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656.

(2) **Procedures following approval.** After a REAP grant project is approved by the Board, it is monitored to assure it is constructed in accordance with plans and specifications approved by the Board and DEQ. REAP grant recipients are required to employ a full time resident inspector to monitor and record construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(~~e~~g) In carrying out its various clean lakes programs, the Board complies with antidegradation standards, and leads to maintenance of water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, in the following ways:

(1) The Board participates with municipalities and federal agencies in conducting lake water quality assessments and studying the problems causing impairment or pollution.

(2) The Board makes recommendations for removal of pollutants, watershed restoration and management activities, and controlling nonpoint source pollution through implementation of best management practices.

(3) In some instances the Board enters into contracts for implementation of pollution control measures on threatened or impaired waterbodies.

[OAR Docket #05-798; filed 5-6-05]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 55. DEVELOPMENT ON STATE OWNED OR OPERATED PROPERTY WITHIN FLOODPLAINS AND FLOODPLAIN ADMINISTRATOR ACCREDITATION

[OAR Docket #05-794]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Floodplain Administrator Accreditation Program [NEW]

AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. Supp. 2004, §1601 et seq.; 75 O.S. 2001, §250 et seq.

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The staff of the Oklahoma Water Resources Board ("OWRB") is amending various provisions of OAC 785:55 by revising the chapter title to reflect the change in state law that provides authority to the Board to accredit floodplain administrators for purposes of the Oklahoma Floodplain Management Act and the National Flood Insurance Program. Additionally, a new subchapter containing rules detailing requirements for accreditation of floodplain administrators would be added to the chapter. A primary requirement for floodplain administrator certification would include annual mandatory continuing education hours. The circumstances creating the need for the new rules are amendments to the Oklahoma Floodplain Management Act that become effective January 1, 2005, which provide authority for local floodplain boards to hire accredited floodplain administrators and which provide authority to the Oklahoma Water Resources Board to establish accreditation standards for floodplain administrators.

CONTACT PERSON:
Dean A. Couch, General Counsel, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 7. FLOODPLAIN ADMINISTRATOR ACCREDITATION PROGRAM

785:55-7-1. Authority and purpose

(a) **Authority.** These rules are promulgated and adopted pursuant to and as authorized by 82 O.S. Supp. 2004, §1085.2 and 82 O.S. Supp. 2004, §§1603, 1604, 1620 and 1620.1, as amended.

(b) **Purpose.** The purpose of this program is to provide a procedure for accrediting floodplain administrators and to assure that persons responsible for important economic decisions

affecting health, safety and welfare of the State receive annual training to assist them in managing development in floodplains.

785:55-7-2. Subchapter definitions

In addition to the definitions in Section 785:55-1-2 of this Chapter, the following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Community" means a town, city, or county, which has created a floodplain board that has adopted floodplain regulations.

"Executive Director" means Executive Director of the Oklahoma Water Resources Board (Board).

"Floodplain administrator" *means a person accredited by the Board and designated by a floodplain board, to administer and implement laws and regulations relating to the management of floodplains [82:1603(6)].*

"Floodplain regulations" *means the codes, ordinances and other written requirements relating to the use of land and construction within the channel and floodplain areas including, but not limited to, zoning ordinances, platting regulations, building codes, housing codes, setback requirements and open area regulations [82:1603(8)]* adopted by a community floodplain board in order to qualify for participation in the National Flood Insurance Program.

"Flood-prone areas" means areas that are subject to, or are exposed to, flooding and flood damage.

785:55-7-3. Designation of floodplain administrator

The floodplain board for each community shall designate a person to serve as the floodplain administrator for the community. The floodplain administrator may be part-time, full-time or contracted.

785:55-7-4. Accreditation required

All floodplain administrators must be accredited to act in the capacity of a floodplain administrator.

785:55-7-5. Temporary accreditation period; first full accreditation period

A temporary accreditation period is established for the period November 1, 2004 through June 30, 2005. All persons designated as floodplain administrators as of November 1, 2004, shall be deemed accredited through June 30, 2005. The first full accreditation period shall be from July 1, 2005 through June 30, 2006. Unless otherwise approved by the Board, all persons designated as floodplain administrators as of June 30, 2005, must be accredited pursuant to the provisions of 785:55-7-7 and 785:55-7-8 no later than June 30, 2005.

785:55-7-6. Vacancies and replacement of floodplain administrators; notice to Board

The community's floodplain board shall contact the Board within thirty (30) days after a floodplain administrator position becomes vacant. The floodplain board shall use its best efforts to designate a successor floodplain administrator within sixty (60) days after a vacancy occurs. The successor must become accredited as described in Sections 785:55-7-7 and 785:55-7-8 within one hundred twenty (120) days after being designated as floodplain administrator.

785:55-7-7. Accreditation application

(a) All persons who are designated as a floodplain administrator by a community floodplain board must file an application for accreditation with the Board on a form provided by the Board.

(b) The application and supporting documentation will be reviewed by the Board's staff, Board staff will inform the applicant in writing regarding any deficiencies in the application.

(c) Completed applications will be presented to the Board with a recommendation from Board staff on whether to accredit the floodplain administrator.

(d) Proof of being a Certified Floodplain Manager (CFM®) under the Oklahoma Floodplain Managers Association (OFMA) or other association will fulfill the accreditation obligation.

785:55-7-8. Initial accreditation requirements and standards

(a) To obtain initial accreditation, the Board may consider the knowledge, experiences, skills, and training of an applicant in floodplain management and in minimization and prevention of flood hazards.

(b) Knowledge, experiences, skills, and training of an applicant in floodplain management and in minimization and prevention of flood hazards can be shown through documentation demonstrating one of the following:

(1) completion of a continuing education training approved by the Board;

(2) evidence of at least two (2) years of sufficient experience in floodplain management;

(3) proof of current standing as a CFM® in the certification program of OFMA or other association; or

(4) successful passage of an examination given by the Board.

785:55-7-9. Expiration of accreditation and renewal of accreditation

(a) All accreditations expire on June 30 of each year.

(b) Accreditation must be renewed each year. On or before July 1 of each year, each accredited floodplain administrator shall submit the following:

(1) renewal application on a form provided by the Board;

(2) documentation, such as an attendance certificate, showing completion of required continuing education unless otherwise determined by the Executive Director, provided that continuing education shall not be required for renewal for floodplain administrators who have been accredited less than one (1) year prior to July 1 or proof of being a CFM®.

(c) An application for renewal submitted after June 30 will be considered an application for new accreditation.

785:55-7-10. Continuing education requirement

(a) Between July 1 and June 30 of each year, floodplain administrators shall attend at least six (6) hours of approved continuing education relating to floodplain management.

(b) Continuing education training provided by the Federal Emergency Management Agency, the Board, OFMA and the Association of State Floodplain Managers is presumptively approved. The Board must specifically approve continuing education training provided by others.

(c) Floodplain administrators may request pre-approval of continuing education training provided by others. Information concerning the continuing education training provided by others must be submitted to the Board for review and approval.

(d) Floodplain administrators may earn six (6) hours of approved continuing education by successfully completing the Board's Floodplain Management 101 Study Course.

[OAR Docket #05-794; filed 5-6-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 1. OPERATIONS AND PROCEDURES

[OAR Docket #05-779]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 11. Publications
800:1-11-1. Charges for workshops, publications and other material [AMENDED]
Subchapter 13. Hunting and Fishing ~~Licenses~~License Dealers
800:1-13-3. Dealer operating provisions [AMENDED]
800:1-13-11. Wildlife Land Stamp, also known as Fishing and Hunting Legacy Permit [NEW]
800:11-13-13. Internet Point of Sale License System [NEW]
AUTHORITY:
Title 29 O.S., Section 3-101; 3-103, 3-105; 3-303, 4-140(D) and 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
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No public hearings were scheduled or requested. No comments were received.
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SUPERSEDED EMERGENCY ACTIONS:
Superseded Rules:
Subchapter 13. Hunting and Fishing ~~Licenses~~License Dealers
800:1-13-11. Wildlife Land Stamp, also known as Fishing and Hunting Legacy Permit [NEW]
Gubernatorial Approval:
February 8, 2005
Register Publication:
22 Ok Reg 638
Docket Number:
05-302
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rules add new publications and charges and define the form, design and establish manner of issuance of the Oklahoma Wildlife Land Stamp.
CONTACT PERSON:
Richard Hatcher, Assistant Director, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/522-6279, or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 11. PUBLICATIONS

800:1-11-1. Charges for workshops, publications and other material

(a) The following charges, with appropriate postage fees where applicable, will be assessed for the following workshops, publications and other materials:

(1) Basic charges for Information and Education Division publications are as follows:

(A) Department Lakes: $2.00
(B) Oklahoma Furbearers: $2.00
(C) Bobwhite Quail in Oklahoma: $5.00
(D) Turkey or Deer Hunters Handbook: $2.00
(E) Managing Ponds Fisheries in Oklahoma: $5.00
(F) Oklahoma Wildlife Management Areas $15.00
(G) Waterfowl Identification in the Central Flyway: $2.00
(H) Outdoor Oklahoma Magazine
(i) Single issue copies: $3.00
(ii) One year subscription: $10.00
(iii) Two year subscription: $18.00
(iv) Three year subscription: $25.00
(I) Oklahoma Fishing Spots: $3.00
(J) Outdoor Oklahoma Journal and Calendar: $15.00
(K) Angler's Guide: $2.00
(L) Caps: $15.00

(2) Basic charges for Administration Division materials are as follows:

(A) Oklahoma Waterfowl Prints: $129.00

(3) Basic charges for Natural Resources Section publications, workshops and materials are as follows:

(A) Attracting Birds: $2.00

(B) Guide to Reptiles and Amphibians of Oklahoma: $25.00

(C) Oklahoma Watchable Wildlife Viewing Guide: $16.00

(D) Birds of North America: $25.00

(E) Bluebird House Plan: $4.00

(F) Dial-A-Bird House: $25.00

(G) Wildlife Posters: $10.00

(H) Bat House Kit: $35.00

(I) Bat House Builder's Handbook $12.00

(J) Wildscape Certification: $15.00

(K) Wildflower Seeds: $3.00

(L) Bat Viewing Workshops: $20.00

(M) Wildlife Diversity Caps: $25.00

(N) Wildlife Diversity Short-Sleeve T-Shirts: $25.00

(O) Cedar Nesting Shelf: $25.00

(P) Landscaping for Wildlife: A Guide to the Southern Great Plains: $50.00

(Q) Oklahoma ConserVacation Outings: $300/person

(R) Pocket Guide to Prairie Birds: $0.75

(S) Butterflies of Kansas, Oklahoma and North Texas: $15.00

(4) Basic Charges for Education workshops and materials are as follows:

(A) Project WILD workshop administrative fee: $10.00

(B) Project WILDs short sleeve T-shirt: $15.00

(C) Deposit for natural resource trunk: $50.00

(D) Hunter safety certification cards: $5.00

(5) Basic charges for miscellaneous publications and materials are as follows:

(A) Fish Division Habitat Maps: $10.00

(B) Reservoir fact sheets: $7.00

(C) Fish rulers: 15¢

(D) Cy Curtis Awards book: $10.00

(b) These fees do not reflect postal or handling charges.

(c) Publications and materials not listed in (a) of this Section shall be cost plus handling until a fee is established. Fees may be waived for education and promotion purposes.

SUBCHAPTER 13. HUNTING AND FISHING ~~LICENSES~~ LICENSE DEALERS

800:1-13-3. Dealer operating provisions

The following are the operating provisions for hunting and fishing license dealerships issued in accordance with 29 O.S., Sections 4-201 and 4-202 and the following provisions:

(1) **Application form.** The applicant must complete and sign an application for dealership form as provided by the Department.

(2) **Requirements.**

(A) Dealer must sign and return the copy of the License Receipt, shipped with each license order, immediately upon delivery. If the shipment does not agree with the License Receipt, the dealer shall notify the License Section immediately. Unsigned or unreturned License Receipts will delay the shipment of future license orders or may result in the loss of dealership, at the Department's discretion. License Receipts will not be required for dealers issuing licenses through the Internet Point of Sale System.

(B) Licenses are issued on consignment only.

(C) ~~License sales totaling over $200.00 during the reporting period must be submitted biweekly (twice per month) on the Wednesday of the assigned payment period. If sales do not exceed $200.00, the dealer must submit all revenues at the end of the second reporting period;~~ License sales reporting periods shall be the first day through the fifteenth day of the month, and the sixteenth day through the last day of the month. License Sales totaling over $200.00 during the reporting period must be remitted within 5 days of the end of the reporting period. If sales do not exceed $200.00 during the month, the dealer must submit all revenues by the 5th of the following month; however, if no licenses are sold, a 'No Sales Report" must be submitted for the second reporting period by the 5th of the following month. Failure of the dealer to submit payments, sales reports or submission of inaccurate sales reports may result in the loss of dealership and/or forfeiture of bond by the Department.

(D) Void and unsold licenses must be reported separately from license sales. The Department and Sportsman's sections of the licenses must be returned in order to receive credit. Void licenses must be returned within thirty (30) days after becoming voided.

(E) The Department shall exercise its authority to audit license dealers at any reasonable time during the fiscal year.

(F) Dealer shall not swap or transfer licenses with other dealers. ~~License~~Universal license numbers are pre-assigned and cannot be transferred.

(G) Dealer must collect the full face value of the license for each license type sold, as prescribed by statute or Commission rule.

(H) Dealer shall not issue refunds for licenses. All requests for refunds should be directed to the Department's License Section.

(I) Duplicate licenses are only issued by the Department or through the Internet Point of Sale System. Prices for duplicate licenses are $1.50 for each license~~.~~; of which 50 cents may be retained by the Internet Point of Sale dealer.

(J) All proceeds from the sale of the hunting and fishing licenses are to be kept separate and apart from other monies, and be available at all times to the Department.

(K) Dealers will be responsible for all license forms and waterfowl stamps issued to them from loss due to fire, theft, robbery, and/or burglary.

(L) All bonds will be for a 13 month duration. The bonding companies are required to give the Department written notice on cancellations 30 days prior to cancellation.

(M) Upon change of ownership of business, dealership must notify License Section and clear the account. Dealerships are not transferrable.

(N) The title of consigned licenses shall be and remain in the Department until sale, and the title of the sale proceeds shall vest in and belong to the Department.

(O) The dealership shall take effect upon approval and execution by the Director, and shall continue in full force-and effect for the calendar year issued unless canceled or terminated by either party with or without cause, upon written notice by registered mail, or personal delivery of notice to the other party.

(P) The Department may cancel the dealership or require subsequent payments by cash, money order or cashiers check, or by debiting the dealers bank account.

800:1-13-11. Wildlife Land Stamp, also known as Fishing and Hunting Legacy Permit

(a) The form and design applicable to annual hunting and fishing licenses shall apply to the Fishing and Hunting Legacy Permit. The manner of issuance applicable to all annual hunting and fishing licenses which includes the universal license form, the Department's Internet Point of Sale or Online Sales System, or phone sales will apply.

(b) The form and design of the lifetime Fishing and Hunting Legacy Permit or Wildlife Land Stamp shall be incorporated into the current design of the appropriate Oklahoma Lifetime License. The issuance shall be consistent with all current lifetime licenses. Each lifetime license sold on or after September 1, 2004 will include the appropriate Wildlife Land Stamp fee in the price of the license.

800:1-13-13. Internet Point of Sale License System

Only license dealers specifically authorized by the Department shall sell hunting and fishing licenses through the Department's Internet Point of Sale System (IPOS). Requirements:

(1) Dealers application form, bonding requirements and all other provisions as stated in Title 800. Department of Wildlife Conservation, Chapter 1. Operations and Procedures, Subchapter. 13. Hunting and Fishing License Dealers.

(2) Dealers must have a personal computer, printer, and internet access in order to participate.

(3) Dealers shall forfeit a portion of the license commission in accordance with Title 29, to be determined by mutual agreement with the Department to pay for the development and administrative cost of the Point of Sale System.

[OAR Docket #05-779; filed 5-4-05]

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

[OAR Docket #05-780]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 5-401, 6-302; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
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Public Hearings:
Date: January 10, 2005
Time: 7:00 p.m.
Lawton - Lawton Public Library, 110 SW 4th Street
Muskogee - Muskogee Public Library, 801 West Okmulgee
Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln Blvd.
Date: January 11, 2005
Time: 7:00 p.m.
Tulsa - Tulsa Technology Center Riverside Campus, 801 E. 91st St.
Woodward - Northwest Electric - 2925 Williams Ave.
Broken Bow - Broken Bow Public Library, 404 N. Broadway
Durant - Durant State Fish Hatchery, 2021 Caddo Highway
Holdenville - Bobby's Restaurant, 1000 N. Hinkley
Ponca City - Ponca City Public Library, 515 E. Grand Avenue
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Effective date:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This rule amendment will drop the 14" size minimum limit on bass harvest at American Horse Lake. This change will enhance angling opportunity and preserve the long-term biological integrity of the American Horse lake fish populations.
CONTACT PERSON:
Kim Erickson, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721, or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from these waters:

(A) **Lakes and Reservoirs** - Adair Recreation Area, Altus-Lugert, Carl Albert, Carl Blackwell, Copan, Draper, Eufaula, Ft. Cobb, Ft. Gibson, Foss, Grand including all tributaries to state line, Greenleaf, Hefner (applies to largemouth and spotted bass only), Heyburn, Hudson, Hugo, Kaw, Keystone, Oologah, Optima, Overholser (including tailwaters and downstream to NW 10th St. bridge), Sardis, Sooner, Taft, Texoma, Thunderbird, Tom Steed, Waurika and Wister (Wister Lake boundaries are US Highway 271 bridge on Fourche Maline River, US Highway 59 bridge on Poteau River and the low water dam, one-half mile above county road bridge number 156, on Holson Creek).

(B) **McClellan-Kerr Arkansas River Navigation System -** All lakes, cutoffs and oxbows from the Oklahoma-Arkansas line to the Port of Catoosa, including R.S. Kerr, Webbers Falls, W.D. Mayo, Chouteau and Newt Graham Reservoir.

(C) **Department of Wildlife Conservation fishing areas -** Lakes ~~American Horse,~~ Burtschi, Chambers, Elmer, Etling, Fugate, Jap Beaver, Ozzie Cobb, Schooler, Vincent, Watonga, Wayne Wallace, Dahlgren, and all the ponds and streams within the following Department WMA's, Atoka, Beaver River, Bolen Hollow, Gruber/Cherokee, Cookson, Ellis Co., Ft. Gibson, James Collins, Lexington, Okmulgee, (excluding the Deep Fork River), Pushmataha, Robbers Cave, Sandy Sanders, Spavinaw, Stringtown, the Blue River Public Fishing Area and all ponds and lakes in the Ouachita National Forest.

(2) All black bass (largemouth, spotted and smallmouth) between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Birch, Chimney Rock (W.R. Holway), Arbuckle, Lone Chimney, Okmulgee, Vanderwork and Hall.

(3) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from Broken Bow Lake (downstream from the slab at the Narrows), Tenkiller Lake (downstream from Horseshoe Bend boat ramp), and from Lake Elmer Thomas.

(4) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(5) All flathead catfish (Pylodictis olivaris) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.

(6) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Foss Lake where walleye, sauger and saugeye less than 16 inches in total length must be returned to the water unharmed immediately, and at Ellsworth, Fort Cobb and Lawtonka lakes where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

(7) All black bass (largemouth, spotted, and smallmouth) less than twenty-two (22) inches in total length must be returned to the water immediately after being taken from Lake Arcadia.

(8) All black bass (largemouth, spotted, and smallmouth) between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Lake Nanih Waiya, Lake Raymond Gary, Dripping Springs Lake and Crowder Lake (Washita County).

(9) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from Skiatook Lake and Pine Creek Reservoir.

(10) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the Mountain Fork River from the State Park Dam downstream to the Re-regulation Dam. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the Illinois River from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(11) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(12) All smallmouth bass less than eighteen (18) inches in total length must be returned to the water unharmed immediately after being taken from Lake Hefner.

(13) All smallmouth bass between nine (9) and twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Baron Fork Creek, Flint Creek, Illinois River upstream from the Baron Fork Creek confluence, Lee Creek, and Little Lee Creek. Possession of smallmouth bass between nine (9) and twelve (12) inches in total length at these streams is prohibited.

(14) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.

[OAR Docket #05-780; filed 5-4-05]

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

[OAR Docket #05-781]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 9. Commercial Turtle Harvest
800:15-9-3. General; operating provisions [AMENDED]
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.
DATES:
Comment period:
December 1, 2004 through January 14, 2005.
Public Hearings:
Date: January 10, 2005
Time: 7:00 p.m.
Lawton - Lawton Public Library, 110 SW 4th Street
Muskogee - Muskogee Public Library, 801 West Okmulgee
Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln Blvd.
Date: January 11, 2005
Time: 7:00 p.m.
Tulsa - Tulsa Technology Center Riverside Campus, 801 E. 91st St.
Woodward - Northwest Electric - 2925 Williams Ave.
Broken Bow - Broken Bow Public Library, 404 N. Broadway
Durant - Durant State Fish Hatchery, 2021 Caddo Highway
Holdenville - Bobby's Restaurant, 1000 N. Hinkley
Ponca City - Ponca City Public Library, 515 E. Grand Avenue
Adoption:
February 7, 2005
Submitted to Governor:
February 16, 2005
Submitted to House:
February 16, 2005
Submitted to Senate:
February 16, 2005
Gubernatorial approval:
March 31, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 13, 2005.
Final adoption:
April 13, 2005
Effective date:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This rule amendment will place provisions on commercial turtle harvesters and buyers that will prohibit them from possessing, buying and/or selling any terrestrial turtles commonly known as "box turtles."
CONTACT PERSON:
Kim Erickson, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721, or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 9. COMMERCIAL TURTLE HARVEST

800:15-9-3. General; operating provisions

Harvest, sale and purchase of aquatic turtles for commercial purpose shall be in accordance with 29 O.S., Sections 4-103A, 4-103B and 6-204 and the following:

(1) The application for an aquatic turtle harvest license must be signed by a Game Warden, and must list the county or counties from which turtles will be harvested.

(2) The harvest, collection, sale or purchase of the following turtle species is prohibited:

(A) Alligator Snapping Turtle (Macroclemys temminckii);

(B) Chicken Turtle (Deirochelys reticularia);

(C) Map Turtle (Graptemys geographica);

(D) All State and/or Federal threatened or endangered species;

(E) All soft shell turtles, except as provided in Title 29 O.S., Section 4-102, greater than eighteen (18) inches in length when measuring the carapace only from the anterior (front) end to the posterior (rear) end shall not be kept in possession or sold or purchased and must be returned to the water immediately.

(3) The possession, buying and/or selling of any terrestrial turtles commonly known as "box turtles", is prohibited.

(~~3~~4) All traps and nets used in the harvest of turtles for commercial purposes must have an identification tag with the owner's name and license number attached and the name and license number of all persons authorized to operate the traps and nets. All such traps and nets must be shown to the county Game Warden at the time the Game Warden signs the license application.

(~~4~~5) Private ponds, municipal lakes and streams on or crossing private land that are open to commercial turtle harvest may be fished for turtles only upon permission of the landowner or municipality. Written permission

for municipal lakes outside the city limits must be on the municipal letterhead stationary, signed by the municipal authority.

(~~5~~6) All persons licensed as a commercial turtle buyer must keep accurate records of all turtles purchased within and exported from the State of Oklahoma. These records shall be available for inspection by any agent of the Department at any time. A copy of each turtle purchase transaction must be given to the seller by the buyer at the time of the sale on forms provided by the Department. A copy of all turtle purchase transactions and turtle exports shall be submitted to the Department as follows:

(A) Each turtle buyer shall complete and submit to the Department a true and accurate purchase record for each turtle purchase transaction. Each purchase record must contain:

(i) the buyer's name and license number;

(ii) seller's name and license number;

(iii) the total number of each species purchased;

(iv) the total amount paid for each species;

(v) the total amount paid for the transaction.

(vi) the total pounds of red-eared, common snapping and soft shell turtles purchased;

(B) A copy of each transaction along with a monthly summary must be mailed to the Department by the 15th of each month by each turtle buyer.

(C) Each turtle buyer must supply to the Department shipping bills of lading of all turtles exported from the state during the monthly reporting period. A copy of all shipping bills of lading must accompany all turtle shipments from the state.

(D) The shipping bill of lading must contain:

(i) total number of turtles in shipment;

(ii) number of each species of turtles in shipment;

(iii) date of shipment;

(iv) person firm or corporation's name transporting turtles out of Oklahoma;

(v) person firm or corporation's name(s) that sold or otherwise provided the turtles to be transported out of Oklahoma;

(vi) total pounds of turtles in the shipment;

(vii) total pounds of each species of turtles in the shipment;

(viii) turtle harvest season dates and turtle species legal for harvest;

(ix) state, if other than Oklahoma, were turtles were harvested;

(x) destination of shipment; and

(xi) total purchase price of turtles in shipment.

(E) Each turtle buyer must supply to the Department an annual summary report of all turtles, by species, purchased within and exported from the State of Oklahoma. This report shall contain:

(i) total number of turtles of each species purchased or received;

(ii) total purchase value of turtles purchased or received;

(iii) total number and pounds of turtles of each species exported from Oklahoma.

(iv) total pounds of red-eared, common snapping and softshell turtles purchased or received;

(~~6~~7) Inaccurate or incomplete records or delinquent reports shall be violations of this rule.

[OAR Docket #05-781; filed 5-4-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #05-782]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-2. Areas open to shotgun with pellets and bow and arrow only [AMENDED]
800:25-3-4. Areas open to archery and shotgun and muzzleloading firearms [AMENDED]
Subchapter 7. General Hunting Seasons
Part 5. Upland Game
800:25-7-16. Wild turkey - Fall; legal means of taking [AMENDED]
800:25-7-18. Wild turkey - Spring; legal means of taking [AMENDED]
Part 7. Falconry
800:25-7-33. General stipulations [AMENDED]
Part 13. Deer
800:25-7-50. General provisions for deer [AMENDED]
800:25-7-51. Deer - archery [AMENDED]
800:25-7-54. Legal firearms specifications [AMENDED]
800:25-7-55. Deer-Youth Gun Season [AMENDED]
Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-91. Cherokee GMA [AMENDED]
800:25-7-93. Cookson WMA [AMENDED]
800:25-7-98. Fort Cobb WMA [AMENDED]
800:25-7-105.6. Hackberry Flat WRP [AMENDED]
800: 25-7-127. Okmulgee GMA [AMENDED]
800:25-7-140. Sandy Sanders WMA [AMENDED]
800:25-7-152. Washita County WMA [AMENDED]
800:25-7-154. Waurika WMA [AMENDED]
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.
DATES:
Comment period:
December 1, 2004 through January 14, 2005.
Public Hearings:
Date: January 10, 2005
Time: 7:00 p.m.
Lawton - Lawton Public Library, 110 SW 4th Street
Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln Blvd
Ada - Pontotoc County Technology Center, 601 W. 33rd
Idabel - Kiamichi Technology Center, Intersection of Hwy 70 and 259 North of Idabel
Okmulgee - East Central Electric Cooperative, Hwy 75 South
Date: January 11, 2005
Time: 7:00 p.m.
Tulsa - Tulsa Technology Center Riverside Campus, 801 E. 91st St.
Woodward - Northwest Electric - 2925 Williams Ave.
Altus - Altus Public Library, 421 N. Hudson
McAlester - Kiamichi Technology Center, Intersection of Hwy 69 and 270
Adoption:
February 7, 2005

Submitted to Governor:
February 16, 2005
Submitted to House:
February 16, 2005
Submitted to Senate:
February 16, 2005
Gubernatorial approval:
March 31, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 13, 2005.
Final adoption:
April 13, 2005
Effective date:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The proposed rule amendments are designed to adjust harvest methods and seasons, verify suitability of falconers wishing to advance from apprentice to general status, increase spring turkey and quail hunting opportunities on various wildlife management areas; eliminate broadhead restrictions for archery turkey hunting and clarify legal firearms for the deer firearms seasons.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-2. Areas open to shotgun with pellets and bow and arrow only

The following Corps of Engineers areas are open to shotgun with pellets and bow and arrow only.

(1) Canton Lake: A 80-acre unit above State Highway 58A in the Sandy Cove Area.

(2) Keystone Lake:

(A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.

(B) A 200-acre unit on the west side of the north end of the U.S. Highway 64 bridge.

(C) A 530-acre unit north of the New Mannford Ramp area.

(D) A 480-acre unit east of the Cimarron Park area.

(E) A 100-acre unit north and south of the Pawnee Cove Access Point.

(F) A 450-acre unit south and east of the town of Prue.

(G) A 200-acre unit in the Old Mannford Ramp area.

(H) A 280-acre unit on the south side of the road ending at Washington Irving North.

(I) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.

(J) A 200-acre unit south of Highway 51 on Bakers Branch.

(3) Hugo Lake: except archery only during all deer seasons.

(A) A 2373-acre unit in the Kiamichi Park Area.

(B) A 418-acre unit in the Salt Creek Area.

(C A 478-acre unit in the Wilson Point Area.

(D) A 481-acre unit in the Virgil Point Area.

(E) A 280-acre unit in the Sawyer Bluff Area.

(F) A 60-acre unit in the Rattan Landing Area.

(G) A 500-acre unit in the embankment area above Hugo Dam.

(4) Tenkiller Ferry Lake:

(A) A 110-acre unit north of the asphalt road and east of OK Highway 10A.

(B) A 310-acre unit south and east of OK highway 100.

(5) Copan Lake: except archery only during all deer seasons.

(A) A 650-acre unit below the dam.

(B) A 100-acre unit east and southeast of Copan Point Park.

(C) Three islands north of Washington Cove Park.

(6) Fort Gibson Lake:

(A) A 300-acre unit on the north side of North Bay.

(B) A 800-acre unit on the south side of the Chouteau Creek, starting at U.S. highway 69 and running east and south to State Highway 33.

(C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.

(D) A 480-acre unit on the west side of Mallard Bay.

(E) A 432-acre unit lying east of the Junction of Snug Harbor road and Whitehorn Cove road.

(F) A 424-acre unit in Section 13 of the Blue Bill Point housing addition.

(G) A 160-acre unit west of the town of Murphy.

(H) A 650-acre unit on Pryor Creek beginning on the east side of State Highway 69 in sections 29, 30 & 31.

(I) A 190-acre unit in the south $\frac{1}{2}$ of section 12, north of the Blue Bill Recreation Area.

(J) A 120-acre unit west of the town of Hulbert.

(7) Sardis:

(A) A 950-acre unit in the Potato Hills Area.

(B) A 100-acre unit in the Sardis Cove Area.

(8) Webbers Falls Lock and Dam:

(A) A 37-acre unit on the peninsula north of the lock and dam.

(B) A 150-acre unit in the Hopewell Park Area.

(C) A 50-acre unit in the Arrowhead Park Area, only open for hunting December I through February 28.

(D) A 150-acre unit in the Brewer's Bend Area, only open for hunting December 1 through February 28.

(E) A 50-acre unit south of the Spaniard Creek Area.

(F) A 60-acre unit off lock view access road and south of the project office.

(G) A 400-acre unit in the Three Forks Area.

(9) Lake Texoma:

(A) A 355-acre unit in the Bums Run Area.

(B) A 457-acre unit below Denison Dam.

(C) A 60-acre unit in the Willow Springs Area.

(D) A 150-acre unit in the Kansas Creek Area.

(E) A 100-acre unit on the north side of Alberta Creek.

(F) A 110-acre unit on the Limestone Creek Area.

(G) A 250-acre unit on the Treasure Island, North Island Group.

(H) A 500-acre unit southwest of McLaughlin Creek.

(I) A 110-acre unit in the Washita Point Area.

(J) A 1200-acre unit north of Newberry Creek.

(K) A 300-acre unit south of the Butcher Pen Area.

(L) A 800-acre unit on either side of highway 70 on the east side of the lake.

(M) A 1,000-acre unit in the Lakeside area.

(N) A 208-acre unit west of Platter.

(10) Kaw Lake:

(A) A 280-acre unit in the Traders Bend Area.

(B) A 320-acre unit in the Sarge Creek Cove Area.

(C) A 220-acre unit in the Burbank Landing Area.

(D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.

(E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.

(11) Eufaula Lake: Open for archery 1 October through 28 February, open for shotgun with pellets from 1 November through 28 February.

(A) A 320-acre unit in the Brooken Cove Area.

(B) A 137-acre unit in the highway 31 Landing Area.

(C) A 98-acre unit in Holiday Cove Area.

(D) A 100-acre unit below the dam on the north side of the river.

(E) A 200-acre unit in the Juniper Creek Area.

(F) A 600-acre unit know as Duchess Creek Island, except restricted to shotgun with slugs only during deer gun season.

(G) A 500-acre unit in the Bunny Creek Area.

(H) A 400-acre unit in the Gentry Creek Area.

(I) A 400-acre unit in the Belle Starr North Area.

(12) Chouteau Lock and Dam (L&D 17): A 150-acre unit in the Tullahassee Loop Area.

(13) Hulah Lake:

(A) A 200-acre unit in the Turkey Creek Point Area.

(B) A 60-acre unit below Hulah Dam.

(C) A 375-acre unit in the Caney Bend Area.

(14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.

(15) Oologah Lake:

(A) A 800-acre unit on the east side of Blue Creek Park.

(B) A 180 acre-unit on the south side of Spencer Creek Park.

(C) A 120-acre unit east of Double Creek Park.

(D) A 640-acre island, known as Goose Island, southeast of Sunnyside Ramp.

(16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.

(17) Newt Graham Lock and Dam 18 (L&D 18) All lands presently designated as open to public hunting.

800:25-3-4. Areas open to archery and shotgun and muzzleloading firearms

The following areas are open to archery, shotgun, and muzzleloading firearms.

(1) Chouteau Lock and Dam (L&D 17): All lands presently designated as open to public hunting from U.S. Highway 51 north to Newt Graham.

~~(2) Newt Graham Lock and Dam (L&D 18): All lands presently designated as open to public hunting.~~

(~~3~~2) Eufaula Lake: A 100-acre unit southeast, across the lake from Arrowhead State Park.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 5. UPLAND GAME

800:25-7-16. Wild turkey - Fall; legal means of taking

The legal means of taking turkey during the fall season shall be as follows:

(1) **Archery.** Archery hunting is by bow and arrow with the same characteristics legal for the deer archery season~~.~~, except that there is no minimum length required for the broadhead.

(2) **Gun.** Gun hunting is by the following methods and in accordance with the following provisions:

(A) Shotgun (conventional or muzzleloading), handgun or rifle; except as otherwise provided.

(B) Rimfire firearms, except .22 magnum, .17 HMR caliber, and 5 mm magnum, are illegal.

(C) Muzzleloading rifles and handguns of .36 caliber or larger are legal in all open counties, except as otherwise provided.

(D) Conventional handguns and rifles are not permitted for turkey hunting during the two day period when turkey season and deer primitive season run concurrently.

800:25-7-18. Wild turkey - Spring; legal means of taking

The legal means of taking turkey during the spring season shall be shotgun (conventional or muzzleloading), or bow and arrow statewide; with the same characteristics legal for the deer archery season~~.~~, except that there is no minimum length required for the broadhead.

PART 7. FALCONRY

800:25-7-33. General stipulations

(a) Nonresident General and Master falconers will be allowed to take legal raptors in Oklahoma provided that their state of residence reciprocates such approval for Oklahoma falconers. Nonresidents must make written application to the Department for a falconry license and hunting license. Nonresidents are required to show proof of falconer's license in their state of residence. Nonresidents shall be limited to taking one raptor per year.

(b) No licensee shall purchase, offer for sale, sell or barter any native raptor acquired from the wild of Oklahoma.

(c) General and Master class falconers may buy, sell, or barter any lawfully possessed raptor which is bred in captivity under authority of a Federal Raptor Propagation Permit and banded with a numbered seamless marker issued by the U.S. Fish and Wildlife Service. (d) Feathers that are molted may be retained and exchanged by licensees only for imping purposes.

(e) Another falconry license holder may care for the birds of a licensee, if written authorization from the licensee accompanies the birds when they are transferred: Provided, that if the period of care will exceed fifteen days, the Oklahoma Department of Wildlife Conservation must be informed in writing where the birds are being held, the reason for the transfer, who is caring for them, and approximately how many days they will be in the care of the second person.

(f) A falconry license holder shall obtain written authorization from the Department before any species not indigenous to this State is intentionally released into the wild. Resident species may be released at any time, however, the marker must be removed and surrendered as outlined above. A standard federal bird band shall be attached to such birds by the Department or a Service-authorized federal bird bander whenever possible.

(g) A person who possesses a lawfully acquired raptor before September 14, 1989 who fails to meet the license requirements shall be allowed to retain the raptor. All such birds shall be identified with markers supplied by the U.S. Fish and Wildlife Service and cannot be replaced if death, loss, release or escape occurs.

(h) A person who has legally possessed raptors before September 14, 1989 in access of the number allowed under his or her class permit or of species not authorized under these regulations, shall be allowed to retain the extra raptors. All such raptors shall be identified with markers supplied by the U.S. Fish and Wildlife Service and no replacement can occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of license held by the licensee.

(i) Firearms are not permitted while hunting with raptors.

(j) Falconers shall submit any permanent address change to the Department within 15 days.

(k) Individuals currently holding an apprentice falconry license, who petition the Department to be advanced to a General class falconer, shall submit with their request a signed letter of recommendation from their sponsor.

PART 13. DEER

800:25-7-50. General provisions for deer

The following general hunting provisions apply to the taking of deer:

(1) **Bonus deer.** The bonus deer designation includes all controlled deer hunts on public and private lands. A permit awarded by drawing is required for all bonus deer hunts in addition to a bonus deer tag. Hunters may hunt only in that area specified on their bonus deer permit. The bonus deer tag is valid for only the designated controlled hunt. Deer taken during a bonus hunt do not count against the statewide deer limit.

(2) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to one-half hour after sunset.

(3) **Antlered deer.** An antlered deer is any deer, regardless of sex, with at least three inch antler length above the natural hairline on either side.

~~(4) **Concurrent primitive and archery seasons.** During periods when the deer archery, deer primitive (muzzleloading), and deer gun seasons overlap, individuals may be afield with only one of the appropriate means of taking (muzzleloading, gun, or archery equipment) at a time.~~

(~~5~~4) **Tagging and checking.** The following provisions apply to the tagging and checking of deer:

(A) Persons taking a deer shall securely attach their name and license number immediately to the carcass.

(B) Before the deer is transported from the hunt area, all deer must be checked at the nearest hunter check station or with an authorized Department employee where the deer will be tagged with a carcass tag.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Deer tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

(D) Upon harvesting a deer all annual license/permit holders will be required to complete the "Record of Game" Section on the back of the license form.

(~~6~~5) No more than six (6) deer per individual may be taken statewide by anyone regardless of seasons hunted. This limit may include no more than three (3) antlered deer regardless of seasons hunted.

(~~7~~6) **Legal Means of Taking:** Telemetric radio tracking devices for archery are legal, however, thermal tracking devices or detecting units are prohibited.

800:25-7-51. Deer - archery

The following hunting dates, open areas, bag limits and legal means of taking apply to hunting deer with archery:

(1) **Dates.** The dates for the deer archery season shall be October 1 through January 15. During the period from January 1 - January 15 antlerless deer are the only legal deer.

(2) **Open areas.** The season is open statewide.

(3) **Bag Limit.** Four (4) deer including no more than two (2) antlered deer. A separate tag is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit.

(4) **Legal means of taking.** The legal means of taking deer with archery shall be as follows:

(A) Legal bows. A legal bow is any bow, except the crossbow, of forty pounds or more draw weight.

(B) Legal arrows for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide and not less than 1 $\frac{1}{2}$ inches long.

(C) Any device that permits a bow to be held mechanically at full or partial draw is prohibited.

(D) Laser sights are prohibited.

(E) Hand-held releases are permitted.

(F) No person shall carry or use any firearm in conjunction with any bow and arrow during the archery deer season while hunting deer with bow and arrow~~. Except,~~ , except under the provisions of the Oklahoma Self-Defense Act, or whenever the archery season is concurrent with any deer gun or deer primitive season and the hunter has the appropriate licenses and legal firearms and clothing requirements to participate in the said gun or primitive season.

(G) Crossbows. A crossbow is defined as having a draw weight of 100 pounds. Bolts must be equipped with broadhead hunting type points not less than 7/8 inches wide and bolts must be a minimum of 14 inches in length. Crossbows must be equipped with safety devices. Laser sights are prohibited. Leverage gaining devices are permitted. No crossbow may be transported in a motorized vehicle unless uncocked or disassembled.

800:25-7-54. Legal firearms specifications

The following are the legal firearms specifications for rifles, muzzleloading firearms, shotguns, handguns and bows:

(1) **Rifles.** Centerfire rifles only and firing ammunition with a soft-nosed bullet are legal if firing at least a 55 grain weight bullet and having an overall cartridge case length of 1-1/4 inches or longer. Hollow point bullets are legal. Clips or magazines of all.22 caliber firearms may not be capable of holding more than seven (7) rounds of ammunition. Fully automatic firearms are prohibited.

(2) **Muzzleloading firearms.** Muzzleloading rifles and shotguns that are legal for the muzzleloading season shall also be legal in all areas open to rifles, except black powder firearms loaded from the breech are also legal. Muzzleloading pistols (singleshot or revolver) with characteristics that are described for 40 caliber rifles are permissible as a secondary firearms, but may be used only for killing a downed animal.

(3) **Shotguns.** Twenty gauge shotguns or larger, firing a single rifled slug.

(4) **Handguns.** Centerfire handguns chambered for a 24 caliber or larger, 100 grain or heavier, soft-nosed bullet having an overall cartridge case length of 1 1/4 inches or longer, any semi-automatic pistol chambered for any centerfire ammunition with a 100 grain or heavier soft-nosed bullet and having a cartridge case size of .40 caliber or larger, or any pistol chambered for any centerfire rifle ammunition with a soft-nosed bullet firing at least a 55 grain bullet and having an overall cartridge case length of 1-1/4 inches or longer . Minimum barrel length is four inches. Fully automatic firearms are prohibited.

(5) **Bows.** Legal bows and arrows. A legal bow is defined as any bow, except the crossbow, of forty (40) pounds or more draw weight. Legal arrows for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide and not less than 1$\frac{1}{2}$ inches long. Any device that permits a bow to be held mechanically at full or partial draw is prohibited. Laser sights are prohibited. Hand-held releases are permitted.

800:25-7-55. Deer-Youth Gun Season

(a) **Age Requirements.** All youth under 18 years of age on the first day of the calendar year and eligible to purchase an antlerless youth deer gun permit. All participants, while hunting, are required to be accompanied by an adult, 18 years or older. The adult shall not hunt, except that the adult may archery hunt with valid licenses while accompanying the youth hunter. The adult hunter accompanying the youth hunter shall not possess any rifle, shotgun, or pistol.

(b) **Dates.** The dates for the youth season shall be ~~the 3rd Friday, Saturday and Sunday in October~~a Friday, Saturday, and Sunday as published in the current Oklahoma Hunting Guide and Regulations.

(c) **Open Areas.** The season is open statewide.

(d) **Bag Limit.** One (1) antlerless deer. An unfilled antlerless youth deer gun permit shall be valid during the regular deer gun season in designated antlerless zones.

(e) **Legal means of taking.** All rifles (conventional or muzzleloader), handguns, shotguns or bows legal during the deer gun season shall also be legal during the youth deer season.

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-91. Cherokee GMA

The following hunting and trapping seasons apply to the Cherokee GMA: Unless otherwise provided, firearms are restricted to .22 rimfire and shotgun with pellets.

(1) Quail: Open January 1 through January 31, except when statewide season closes prior to January 31.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.

(B) Gun: Closed season.

(5) Turkey - Spring: Open to special hunt permittees. Permits will be issued by drawing~~.~~, except the last 14 days of the statewide season will be open to the general public, 1 tom limit.

(6) Squirrel: Open August 1 through August 31 and January 1 through January 31, except when statewide season closes prior to January 31.

(7) Rabbit: Open January 1 through January 31, except when statewide season closes prior to January 31.

(8) Crow: Open January 1 through January 31, except when statewide season closes prior to January 31.

(9) Dove: Closed season.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Open January 1 through January 31, except when statewide season closes prior to January 31.

(12) Woodcock: Open January 1 through January 31, except when statewide season closes prior to January 31.

(13) Deer - archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: controlled hunts only.

(16) Trapping: Open the first day of the statewide season that follows the deer gun season through January 31.

(17) Pursuit with hounds: Open the first day of the statewide season that follows the deer gun season through January 31.

(18) Predator/furbearer calling: Open the first day of the statewide season that follows the deer gun season, through January 31.

(19) Waterfowl: Open January 1 through January 31, except when statewide season closes prior to January 31.

800:25-7-93. Cookson WMA [AMENDED]

The following hunting and trapping seasons apply to the Cookson WMA: Unless otherwise provided, firearms are restricted to .22 rimfire and shotgun with pellets.

(1) Quail: Open January 1 through January 31, except when statewide season closes prior to January 31.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.

(B) Gun: Closed season.

(5) Turkey - Spring: Open to special hunt permittees. Permits will be issued by drawing~~.~~ except the last 14 days of the statewide season will be open to the general public - 1 tom limit.

(6) Squirrel: Open August 1 through August 31 and January 1 through January 31, except when statewide season closes prior to January 31.

(7) Rabbit: Open January 1 through January 31, except when statewide season closes prior to January 31.

(8) Crow: Open January 1 through January 31, except when statewide season closes prior to January 31.

(9) Dove: Closed season.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Open January 1 through January 31, except when statewide season closes prior to January 31.

(12) Woodcock: Open January 1 through January 31, except when statewide season closes prior to January 31.

(13) Deer - archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Open January 1 through January 31, except when statewide season closes prior to January 31.

(17) Pursuit with hounds: Open to special permittees only. Permits will be issued by drawing.

(18) Predator/furbearer calling: Open January 1 through January 31, except when statewide season closes prior to January 31.

(19) Waterfowl: Open January 1 through January 31, except when statewide season closes prior to January 31.

800:25-7-98. Fort Cobb WMA

The following hunting and trapping seasons apply to the Fort Cobb WMA: Unless otherwise provided, hunting is restricted to shotgun or bow and arrow only.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates.

(B) Gun: Closed season.

(5) Turkey-Spring: ~~Closed season.~~ Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, steel shot only.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Controlled hunts only.
(15) Deer-gun: Same as statewide season dates, except closed last seven days. Shotgun only.
(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-105.6. Hackberry Flat WRP

The following hunting and trapping seasons apply to the Hackberry Flat WRP:
(1) Quail: ~~Closed season.~~Same as statewide season dates except closed October 15 - January 31.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Closed season.
(B) Gun: Closed season
(5) Turkey - Spring: Closed season.
(6) Squirrel: Closed season.
(7) Rabbit: Same as statewide season dates except closed October 15-January 31.
(8) Crow: Same as statewide season dates except closed October 15-January 31.
(9) Dove: Same as statewide season dates except closed October 15-January 31.
(10) Rail and gallinule: Same as statewide season dates except closed October 15-January 31.
(11) Common snipe: Same as statewide season dates except closed October 15-January 31.
(12) Woodcock: Closed season.
(13) Deer-archery: Same as statewide season dates except closed October 15 - January 31.
(14) Deer-primitive firearms: Closed season.
(15) Deer-gun: Closed season.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Same as statewide season dates except closed October 15-January 31.
(18) Predator/furbearer calling: Same as statewide season dates except closed October 15-January 31.
(19) Waterfowl: Same as statewide season dates except closed October 15-January 31.
(20) All shotgun hunting is restricted to federally approved nontoxic shot.

800:25-7-127. Okmulgee GMA

The following hunting and trapping seasons apply to the Okmulgee GMA:
(1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Either-sex, same as statewide season dates, except closed from the opening day of primitive firearms season through the first nine days of deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Controlled hunt only.~~Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
(8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through the first nine days of deer gun season.
(9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
(11) Common snipe: Same as statewide season dates, except closed from the opening day of archery deer season through the first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery deer season through first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed from opening day of primitive firearms season through first nine days of deer gun season.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during designated controlled hunt dates.

800:25-7-140. Sandy Sanders WMA

The following hunting and trapping seasons apply to the Sandy Sanders WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.

(4) Turkey - Fall:
(A) Archery: Closed season.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Closed season.~~Controlled hunts only.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Open to live box traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
(18) Predator/burbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-152. Washita County WMA

The following hunting and trapping seasons apply to the Washita County WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Closed season.~~Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Closed season.
(15) Deer - gun: Closed season.
(16) Trapping: Open to watersets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-154. Waurika WMA

The following hunting and trapping seasons apply to the Waurika WMA: Unless otherwise provided, firearms are restricted to .22 caliber rimfire and shotgun with pellets.
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Closed season.~~Controlled hunts only.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Closed season.
(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

[OAR Docket #05-782; filed 5-4-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #05-800]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 13. Commercial Hunt Areas
800:25-13-6. Facility requirements [AMENDED]
800:25-13-10. Record requirements [NEW]
800:25-13-11. Release of wildlife requirements [NEW]
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.
DATES:
Comment period:
December 1, 2004 through January 14, 2005.
Public Hearings:
Date: January 10, 2005
Time: 7:00 p.m.
Lawton - Lawton Public Library, 110 SW 4th Street
Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln Blvd
Ada - Pontotoc County Technology Center, 601 W. 33rd

Idabel - Kiamichi Technology Center, Intersection of Hwy 70 and 259 North of Idabel
Okmulgee - East Central Electric Cooperative, Hwy 75 South
Date: January 11, 2005
Time: 7:00 p.m.
Tulsa - Tulsa Technology Center Riverside Campus, 801 E. 91st St.
Woodward - Northwest Electric - 2925 Williams Ave.
Altus - Altus Public Library, 421 N. Hudson
McAlester - Kiamichi Technology Center, Intersection of Hwy 69 and 270

Adoption:
March 7, 2005
Submitted to Governor:
March 11, 2005
Submitted to House:
March 11, 2005
Submitted to Senate:
March 11, 2005
Gubernatorial approval:
March 23, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2005.
Final adoption:
May 6, 2005
Effective date:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rule will help ensure that Commercial Hunt Areas are not negatively impacting the state's wild bird populations. The rules are will also help hunters know if an area is legally a Commercial Hunt Area.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 13. COMMERCIAL HUNT AREAS

800:25-13-6. Facility requirements

The facility requirements on a Commercial Hunting Area for wildlife are as follows:

(1) **Birds only.** The minimum requirement for fencing a bird area is a four strand barb wire fence.

(2) **Wildlife other than birds hunted for sport.** The minimum requirements for wildlife is at least eight foot of welded or woven wire or cyclone fence and the top two feet of the eight foot fence can be barbed wire, and must be fenced in a way to prevent licensed wildlife from escaping and big game animals belonging to the state from entering and be capable of retaining animals within the specified area, or other similar or suitable approved fence.

(3) **Type of signs.** The type of signs to be used on a Commercial Hunting Area must be metal signs, or other weather- proof material and these signs must be posted at all corners and entrances and along the boundary at ~~220 yard~~1/3 mile intervals. If a licensee chooses not to renew their Commercial Hunting Area license, then the signs shall be removed from the area by October 1st of the same year. No person shall post or cause to be posted Commercial Hunting Area signs unless the area posted has been licensed by the Department as a Commercial Hunting Area.

(4) **Size of signs.** The size of signs to be used on a Commercial Hunting Area should be 24" x 12" and the signs must be placed ~~inside and~~facing outside on boundary lines.

(5) **Wording of signs.** The signs on a Commercial Hunting Area must contain the wording, "Commercial Hunting Area Licensed by Oklahoma Department of Wildlife Conservation". The signs must also display the Commercial Hunting Area license number for the area on the same side of the sign as the mandated wording.

(6) **Final Enclosure.** Prior to final enclosure of areas for the hunting of wildlife other than birds a drive must be made throughout the area in the presence of designated Department employees to make a reasonable effort to ensure that any wild whitetail or mule deer, elk, antelope, or other big game, are not present on the area. No wild whitetail or mule deer, elk, antelope, or other big game are to be reintroduced into the area after the final enclosure.

(7) **Inspection.** The Commercial Hunting Area to be hunted must be inspected and approved by personnel of the Department and all records, and facilities, of such areas shall be available for inspection at all reasonable times by authorized representatives of the Department, and/or authorized representatives of the Department of Agriculture. The Department of Agriculture may request blood and/or meat samples be collected from all deer and elk killed and sent to their Department.

800:25-13-10. Records requirements

(a) Each licensee shall maintain daily records of all captive bird releases and a register of hunters signed by the hunters including the number of birds taken by the hunter for each species taken. In addition, the licensee must maintain for inspection, proof of purchase invoices for all birds to be released, or that have been released, giving the name and commercial wildlife breeder license number of the breeder where purchased.

(b) An annual report including the numbers of birds held at the beginning of the year, record of birds obtained from breeders, and record of bird releases and kills shall be submitted to the Department of Department furnished report forms as part of the annual renewal application. The commercial hunt area must submit the annual reports from the previous year by July 31.

800:25-13-11. Trapping and release of birds requirements

If the licensee uses any type of trap to recapture birds that have been released for hunting, the licensee must tag or band all

birds that are initially released prior to trapping with metal tags available from the Department. If traps are used to recapture birds the traps must be checked at least once every 24 hours and any untagged birds within the traps at that time must be immediately released back into the wild. If the licensee does not trap birds then the tagging of the birds before release is not required.

[OAR Docket #05-800; filed 5-6-05]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #05-783]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]
800:30-1-20. Restricted public use areas [AMENDED]
STATUTORY 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.
DATES:
Comment period:
December 1, 2004 through January 14, 2005.
Public Hearings:
Date: January 10, 2005
Time: 7:00 p.m.
Lawton - Lawton Public Library, 110 SW 4th Street
Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln Blvd
Ada - Pontotoc County Technology Center, 601 W. 33rd
Idabel - Kiamichi Technology Center, Intersection of Hwy 70 and 259 North of Idabel
Okmulgee - East Central Electric Cooperative, Hwy 75 South
Date: January 11, 2005
Time: 7:00 p.m.
Tulsa - Tulsa Technology Center Riverside Campus, 801 E. 91st St.
Woodward - Northwest Electric - 2925 Williams Ave.
Altus - Altus Public Library, 421 N. Hudson
McAlester - Kiamichi Technology Center, Intersection of Hwy 69 and 270
Adoption:
February 7, 2005
Submitted to Governor:
February 16, 2005
Submitted to House:
February 16, 2005
Submitted to Senate:
February 16, 2005
Gubernatorial approval:
March 31, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 13, 2005.
Final adoption:
April 13, 2005
Effective date:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rule amendments are to clarify camping regulations on several wildlife management areas and reduce non-hunting activities restriction on a few wildlife management areas.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-4. Camping

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season. Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(c) No overnight camping is permitted on the following areas unless otherwise authorized by the Department:

(1) Altus-Lugert WMA.
(2) Canton WMA (refuge portion).
(3) Cherokee (GMA portion).
(4) Chickasaw NRA (Arbuckle).
(5) Fort Gibson WMA ~~(PHA Portion).~~
(6) Heyburn (refuge portion).
(7) Hulah (refuge portion).
(8) Hugo WMA (refuge portion).
(9) Major County Lands.
(10) McCurtain County Wilderness.
(11) Okmulgee WMA (GMA portion).
(12) Sparrowhawk WMA.
(13) Spavinaw Hills WMA (GMA portion).
(14) Tenkiller WMA.
(15) Van Osdol WMA.
(16) Waurika WMA (refuge portion).
(17) Wister WMA (refuge portion).
(18) Gist WMA
(19) Red Slough WMA

(d) Only hunter and fishermen camping is permitted, and only in designated camping areas on:

(1) Atoka WMA (includes PHA portion).
(2) Beaver River WMA.
(3) Candy WMA.
(4) Canton WMA (except refuge portion).
(5) Cherokee WMA (PHA portion).
(6) Copan WMA.
(7) Ellis County WMA.
(8) Eufaula WMA.
(9) Fobb Bottom WMA
(~~9~~10) Fort Cobb WMA.

~~(10) Fort Gibson (except refuge portion).~~
(11) Fort Supply WMA.
(12) Heyburn WMA (except refuge portion).
(13) Hickory Creek WMA.
(14) Hugo WMA (except refuge portion).
(15) Hulah WMA.
(16) James Collins WMA.
(17) John Dahl WMA (camping is permitted only during hunting seasons).
(18) Kaw WMA.
(19) Lexington WMA.
(20) McClellan-Kerr Navigation System WMA on Lock and Dams 15,16, and 17.
(21) Mountain Park WMA.
(22) Okmulgee WMA (PHA portion, i.e, the area north and east of the Deep Fork River).
(23) Optima WMA.
(24) Ouachita WMA (Homer L. Johnston portion), camping permitted during deer and turkey seasons in designated camping areas.
(25) Packsaddle WMA, camping permitted only during open hunting seasons.
(26) Pushmataha WMA.
(27) Sandy Sanders WMA.
(28) Skiatook WMA.
(29) Spavinaw WMA (PHA portion), camping permitted only during open hunting seasons on area.
(30) Texoma-Washita Arm WMA.
(31) Tishomingo WMA.
(32) Broken Bow WMA.
(33) Cooper WMA.
(34) Osage WMA (Rock Creek Unit).

(e) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
(1) Robbers Cave WMA, camping only during open deer and turkey seasons.
(2) Cookson Hills WMA, hunter camping only during special deer seasons.
(3) Osage WMA (Western Wall Primitive Area), camping only during controlled hunts.

(f) Hunter and fishermen camping is permitted only within fifty yards of roads designated as open for public use at:
(1) Broken Bow WMA.
~~(2) Fobb Bottom WMA.~~
(~~3~~2) Gary Sherrer WMA, camping permitted only during open hunting season on area.
(~~4~~3) Keystone WMA.
(~~5~~4) Love Valley WMA.
(~~6~~5) Oologah WMA.
(~~7~~6) Pine Creek WMA.
(~~8~~7) Stringtown WMA, camping permitted only during open hunting season on area.
(~~9~~10) Wister WMA, (except refuge portion).
(~~10~~11) Deep Fork WMA.

(g) Camping permitted in accordance with U.S. Forest Service regulations at:
(1) Ouachita WMA (Ouachita National Forest), except Homer L. Johnston Unit.
(2) Tiak WMA (Ouachita National Forest).
(3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
(4) Rita Blanca (Cibola National Forest) - Rita Blanca National Grasslands.

(h) ~~Camping is permitted except during specified seasons when hunter only camping is permitted at: McGee Creek WMA.~~Camping is permitted in designated camping areas only at McGee Creek WMA.

(i) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

800:30-1-20. Restricted public use areas

(a) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (areas where camping is allowed) during the period October 1 - February 15: Beaver River, Canton, Lexington, Okmulgee, and Ellis County except fishing and angler camping is permitted at Lake Vincent, Fort Supply and Sandy Sanders.

(b) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (on areas where camping is allowed) during the period October 1 - ~~February 15~~ January 31and spring turkey season: Atoka, Cherokee, Cookson, James Collins, McGee Creek, Osage ~~(Rock Creek Unit), Osage (Western Wall Primitive Area)~~, Pushmataha, and Spavinaw.

(c) The following areas are open to non-hunting activities during the daylight hours only August 1-31: Cherokee GMA, Cookson WMA.

(d) Lake Dahlgren shall be closed to all other activities during Lexington Wildlife Management Area designated controlled hunt dates.

[OAR Docket #05-783; filed 5-4-05]

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

[OAR Docket #05-515]

CORRECTION OF DISCREPANCY IN PERMANENT RULE DOCUMENT PUBLISHED IN MAY 2 ISSUE:

On page 734 in the 5-2-05 issue of the *Register*, there is a discrepancy between the effective date published in the preamble and the effective date published in the enacting clause of the permanent rule document for Title 240, Chapter 10 [OAR Docket #05-515; 22 Ok Reg 733]. The effective date in the enacting clause was incorrectly published as May 1, 2005, but it was published correctly as May 15, 2005 under the "Effective" heading in the preamble. By law, permanent rules cannot become effective until at least 10 days after the permanent rule document is published in the *Register*, so May 1 is not a valid effective date for permanent rules published on May 2. Therefore, the May 15 effective date, as stated in the preamble, is the correct effective date, and the enacting clause SHOULD HAVE READ as follows:

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., §308.1(A), WITH AN EFFECTIVE DATE OF MAY 15, 2005:

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

[OAR Docket #05-516]

CORRECTION OF DISCREPANCY IN PERMANENT RULE DOCUMENT PUBLISHED IN MAY 2 ISSUE:

On page 735 in the 5-2-05 issue of the *Register*, there is a discrepancy between the effective date published in the preamble and the effective date published in the enacting clause of the permanent rule document for Title 240, Chapter 21 [OAR Docket #05-516; 22 Ok Reg 735]. The effective date in the enacting clause was incorrectly published as May 1, 2005, but it was published correctly as May 15, 2005 under the "Effective" heading in the preamble. By law, permanent rules cannot become effective until at least 10 days after the permanent rule document is published in the *Register*, so May 1 is not a valid effective date for permanent rules published on May 2. Therefore, the May 15 effective date, as stated in the preamble, is the correct effective date, and the enacting clause SHOULD HAVE READ as follows:

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., §308.1(A), WITH AN EFFECTIVE DATE OF MAY 15, 2005: