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Brad Henry, Governor
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Secretary of State
Peggy Coe, Managing Editor

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Notices of Rulemaking Intent

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

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

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

TITLE 429. OKLAHOMA LOTTERY COMMISSION CHAPTER 10. RETAILER PROVISIONS

[OAR Docket #07-1392]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

RULES:

429:10-1-3 [AMENDED]

429:10-1-5 [AMENDED]

SUMMARY:

The proposed rule amendments add a bonus payment to retailers for selling certain winning Powerball or Hot Lotto tickets. Payments range from \$1,000 to \$25,000. Payments will be made in a manner determined by the Lottery Commission and will be made regardless of whether the winning ticket is claimed by the winner. The other rule change allows the Lottery Commission to accept full inactive packs up to six (6) weeks after the official end date of an instant game and partial pack returns up to six (6) weeks after the termination, suspension, cancellation, revocation or non-renewal of the retailer's contract with the OLC. In both cases, the limit is currently three (3) weeks.

AUTHORITY

Oklahoma Lottery Commission, 3A O.S., Section 710.

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so before 5:00 p.m. on Tuesday, November 20, 2007 at the following address: Rollo Redburn, Oklahoma Lottery Commission, 3817 N. Santa Fe, Oklahoma City, OK 73118. Comments may be emailed to: Rollo.Redburn@lottery.ok.gov

PUBLIC HEARING:

A public hearing will be held at the Oklahoma Lottery Commission, 3817 N. Santa Fe, Oklahoma City, OK, on Tuesday, November 20, 2007 at 10:00 a.m. Anyone who wishes to speak must sign in by 9:45 a.m. on that day.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Commission with information, including, if possible, direct and indirect costs by type with dollar amounts, that a business entity may incur for rule compliance. Business entities may submit the information in writing by the conclusion of the public comment period and public hearing on Tuesday, November 20, 2007, at the Oklahoma Lottery Commission, 3817 N. Santa Fe, Oklahoma City, OK 73118.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Lottery, 3817 N. Santa Fe, Oklahoma City, OK 73118.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be available for review on and after October 29, 2007 at the Oklahoma Lottery Commission, 3817 N. Santa Fe, Oklahoma City, OK 73118.

CONTACT PERSON:

Rollo Redburn, Administrative Rules Liaison, 522-7700.

[OAR Docket #07-1392; filed 9-24-07]

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

[OAR Docket #07-1390]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 27. Teacher Shortage Employment Incentive Program

610:25-27-3. Application procedure [AMENDED]

610:25-27-5. Educational loan obligations for participant(s) with outstanding student loan debt [AMENDED]

610:25-27-6. Participant eligibility for benefits of the TSEIP [AMENDED]

610:25-27-7. Benefits to be disbursed under the program [AMENDED]

610:25-27-9. Verification and notification requirements [AMENDED]

SUMMARY:

The proposed amendments would make the following changes:

Section 610:25-27-3 currently requires that the deadline for application to the program is while a student is enrolled in a mathematics or science education major at the undergraduate or graduate level. It is possible that a student might graduate in one of these majors without completing an application. Subparagraph (g) of the section will allow for the option of a one-year waiver for students who meet all of the requirements of TSEIP but fail to enroll because of extenuating circumstances.

Notices of Rulemaking Intent

Section 610:25-27-5, sub-paragraph (2) is amended to delete the timeline for notifying the Oklahoma State Regents for Higher Education ("OSRHE") as the timeline too narrowly limits the participants. In sub-paragraph (3), the wording is changed to allow for more flexibility in considering the merits of each case.

Section 610:25-27-6 is amended to remove directions which are irrelevant and to correctly identify the source of the rule. In subparagraph (4), clarifying language is added. Sub-paragraph (5) allows for the possibility of unexpected and unavoidable actions of the school district.

Section 610:25-27-7 is amended by adding the words "Participant" and "participants" which is consistent with other sections of the rules. The deletion of the words "lenders/services of" reflects the necessity of allowing the participant to make the loan payments as many have already completely paid the loans and are allowed to keep the TSEIP payment. The addition of "by the Participant" in sub-paragraph (e) clarifies whose responsibility it is to repay the loans.

Section 610:25-27-9 is amended by deleting the deadline for submitting forms. Depending on a spring or fall semester graduation, Participants are eligible for the incentive payment at different times of the year. In sub-paragraph (c), deleting the deadline allows participants to make changes to their name and address information at the same time as submitting the Employment Compliance Form.

AUTHORITY:

70 O.S., §698.3; 70 O.S., §3206(i); Oklahoma State Regents for Higher Education

COMMENT PERIOD:

Interested persons may submit written and oral comments to Nancy E. Connally, Assistant General Counsel, Oklahoma

State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., November 15, 2007.

PUBLIC HEARING:

A public hearing has not been scheduled; however, one can be requested by contacting Nancy E. Connally, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., November 16, 2007.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after October 15, 2007.

CONTACT PERSON:

Nancy E. Connally, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9335.

[OAR Docket #07-1390; filed 9-20-07]

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

[OAR Docket #07-1387]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 11. Eucha-Spavinaw Management Act [NEW]

35:17-11-1 [NEW]

35:17-11-2 [RESERVED]

35:17-11-3 [NEW]

Appendix A. Eucha-Spavinaw Phosphorus Index [NEW]

AUTHORITY:

State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. §§ 2-4(2), (7), (16), and (29); 10-10.1 et seq.

DATES:

Adoption:

August 23, 2007

Approved by Governor:

September 11, 2007

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2008 unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

These emergency rules fulfill the requirements of House Bill 1490 of the 2007 legislative session by promulgating rules to implement the provisions of the Eucha-Spavinaw Management Act. The Board finds that an emergency exists due to a specific legislative mandate. In addition, if the federal court relinquishes jurisdiction of the Eucha-Spavinaw Phosphorus Index, an emergency would exist based on a compelling public interest to continue the index.

ANALYSIS:

The rules apply to all persons utilizing poultry waste for land application purposes in the Eucha-Spavinaw Watershed. Specifically, these rules incorporate the Eucha-Spavinaw phosphorus index that is currently in use in that watershed into state law and makes the index enforceable by the Department.

CONTACT PERSON:

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

SUBCHAPTER 11. EUCHA-SPAVINAW MANAGEMENT ACT

35:17-11-1. Purpose

The purpose of these rules is to implement the provisions of the Eucha-Spavinaw Management Act and these rules shall apply to all persons utilizing poultry waste for land application purposes in the Eucha-Spavinaw Watershed. In no case shall the provisions of these rules be construed to apply to any persons applying poultry waste for land application purposes in any watershed other than the Eucha-Spavinaw Watershed.

35:17-11-2. [RESERVED]

35:17-11-3. Phosphorus index

(a) The Eucha-Spavinaw phosphorus index for the land application of poultry waste shall be determined pursuant to the criteria and formulas contained in Appendix A of this Subchapter.

(b) Poultry waste shall not be applied to any land application site having a Soil Test Phosphorus (STP) level of 300 mg/kg (milligrams per kilogram) or greater, as determined by the Mehlich-III extractant, ICP analysis method.

(c) Soil samples for analysis of Soil Test Phosphorus shall be collected from zero inches to four inches in depth, or to the actual depth of the soil if less than four inches.

(d) Poultry waste samples for determination of soluble phosphorus shall be analyzed pursuant to the method found on page 74 of "Methods of Phosphorous Analysis for Soils, Sediments, Residuals, and Waters," SERA-IEG 17 Southern Cooperative Series Bulletin No. 396.

(e) Where the index refers to best management practices (BMPs), eligible practices shall adhere to United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standards for Water Quality.

(f) The Eucha-Spavinaw phosphorus index shall also include the following maximum application rates:

(1) The maximum amount of poultry waste that may be applied under any condition during the fall application season is two tons per acre.

(2) The maximum amount of poultry waste that may be applied during any season to fescue or other cool season grasses is two tons per acre.

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(3) The maximum amount of poultry waste that may be applied during the spring and summer seasons to Bermuda fields with greater than fifty percent Bermuda mix is three tons per acre.

(4) The maximum application limits shall supersede even if the calculated ESPI PI would otherwise allow greater application rates.

(g) Under no circumstances shall poultry waste application rates exceed Nitrogen requirements for the crop.

(h) Land application of poultry waste shall be based on the Eucha-Spavinaw phosphorus index but shall also be limited by other applicable statutes or rules where those statutes or rules are more stringent.

APPENDIX A. EUCHA-SPAVINAW PHOSPHORUS INDEX [NEW]

The Phosphorus Index Concept

The original Phosphorus Index (PI) was developed to assist field staff working with landusers to identify sensitive areas and recommend management alternatives to reduce risk of P losses (Lemunyon and Gilbert, 1993). Parameters which influence P availability, retention, management, movement, and uptake are included in the PI. The PI has been developed as a risk assessment tool for P runoff potential from individual fields within a watershed. This assessment is based on soil and field characteristics as well as management practices within each field. Fields having low or high P runoff potential may be identified through the use of the PI and may be prioritized for nutrient application and soil management practices. The PI is designed to assess the relative risks of P loss, not a quantity of P lost in runoff. This document is intended to provide background information for a version of the P Index developed specifically for the Eucha-Spavinaw watershed.

Most states (44) have developed a PI for specific conditions and management practices within each state. Some states have begun to incorporate runoff data to determine weightings for certain parameters. One of the first states to use actual runoff data was Arkansas in the development of a PI for Pastures (DeLaune et al., 2001). Most recent versions of the PI use a multiplicative matrix rather than an additive matrix. The first component considers factors that account for the amount of P on site or being added to the site (P source potential). The second component considers factors that affect P movement and potential off-site transport (P transport potential). The sum of each individual matrix is then multiplied to obtain the P Index.

Calculating the Eucha-Spavinaw Phosphorus Index

The Eucha-Spavinaw PI (ESPI) is based on the Arkansas PI for Pastures. Eight site characteristics are included in the ESPI; they are grouped into P Source and P Transport categories. The ESPI include the following factors: (1) soil test P, (2) soluble P application rate, (3) soil erosion factor, (4) method of P application, (5) soil runoff class, (6) flooding frequency, (7) timing of P application, and (8) grazing management. Based on the ESPI, fields are assigned a class of low, medium, high, or very high.

The ESPI is calculated by multiplying the values for the P source potential and the P transport potential and BMPs, as

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follows;

ESPI = (P Source Potential * P Transport Potential * BMPs)/1.8*100 (eq.1)

Calculating Phosphorus Source Potential

Three sources of P are considered in determining the P Source Potential: soil test P (Mehlich III), soluble manure P, and particulate P soil erosion factor (Table 1).

P Source = 0.4 * lb/ac soluble manure P as poultry litter + 0.0007 * lb/ac soil test P + RUSLE2 value * lb/ac soil test P (eq. 2)

Soil Test P. Soil test P should be determined by collecting a representative soil sample from the field and sending the sample to the appropriate soil testing laboratory. Soil test P should be determined using the Mehlich III procedure (Mehlich, 1984). The value reported by the testing laboratory (lb P/ac) is entered into eq. 2.

Soluble Manure P. The soluble manure P applied is determined by collecting and analyzing the manure which is applied to the field. Soluble P in the manure should be determined using the method described by Self-Davis and Moore (2000). The amount of soluble P applied to a field is entered into eq. 2.

Particulate P Soil Erosion Factor. The erosion factor is calculated by multiplying the annual erosion rate (as calculated by RUSLE2) by soil test P and dividing by a conversion factor (1000 ton soil/ac).

Calculating Phosphorus Transport Potential

Five factors of P transport are considered in determining the P Transport Potential: soil runoff class, flooding frequency, method of application, timing of application, and grazing management (Table 2).

P Transport = runoff class + flooding frequency + application method + application timing + grazing management (eq. 3)

Soil Runoff Class. The soil runoff class is determined using slope gradient and the runoff curve number of the soil (Tables 3

and 4).

Flooding Frequency. The flooding frequency for each soil series is found in the Soil Survey for each particular county. Fields are grouped into land that is never flooded (none), occasionally flooded, or frequently flooded.

Application Method. Application method refers to how the farm manager will apply the manure to a field. The categories include: incorporated, surface applied, or surface applied on frozen or snow covered ground.

Application timing. Timing of application was determined by evaluating historical runoff data as well as seasonal crop growth specific to the Eucha-Spavinaw watershed. Times frames are (with increasing risk for runoff): July-September, April-June, October-March.

Grazing Management. Grazing management is subdivided into three management scenarios: pastures which are hayed only, hayed and grazed, and grazed only. A pasture under intensive grazing would be expected to have a higher risk for P runoff than a pasture with no grazing due to compaction and additional P inputs from cattle.

Best Management Practices (BMPs)

A farmer is given credit for the use of BMPs which may reduce the ESPI, such as fencing around streams to prevent cattle access. These include those BMPs which are not accounted for in the ESPI (i.e. alum is accounted for in the P source factor, therefore it is not listed as an additional BMP). Each BMP is given a weighting factor of 0.9. The final P Index value is multiplied by each BMP that may be utilized within a watershed.

$$\text{ESPI with BMPS} = \text{ESPI} * 0.9 \text{ for each BMP}$$

Example: System with 2 BMPS

$$\text{ESPI} = \text{Initial ESPI} * 0.9 * 0.9$$

More research is needed to determine the effectiveness of each BMP and to identify potential BMPs.

Interpretation and Recommendations of the ESPI

Once the ESPI is calculated using eq. 1, fields are assigned a class of low, medium, high, or very high. Each class is associated with a site interpretation and nutrient application recommendation (Table 5). ESPI values range from 0 to >100 and

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are unitless, which follow an initiative by other Indexes used in the Northeastern and Mid-Atlantic Regions to ensure that Indexes are consistent across state boundaries. Consistent with other Indexes, the ESPI is designed to assess the relative risks of P loss, not a quantity of P lost in runoff.

Table 1 - Phosphorus Source Potential Characteristics and Calculations

Site Characteristic	Description	Loss value
Soil Test P (lb/ac)	The amount of Plant available P in the soil, as measured by soil test.	
Loss rating value	0.0007 x Mehlich III Soil Test P Value	LRV
Soluble manure P rate (lb/ac)	The amount of soluble P applied per acre, lbs. SRP/acre.	
Loss rating value	0.4 x ___ lbs. soluble P applied as poultry litter	LRV
Particulate P Soil erosion factor (tons/ac/yr)	The amount of soil erosion as calculated by $RUSLE2 \times STP$. $RUSLE (Ton A) * STP (lb A) / 1000 Ton A$	
Loss rating value	RUSLE2 value x Mehlich III Soil Test P Value	LRV
P source value = (Loss rating value for soil test P + Loss rating value for soluble manure P + Loss rating value for particulate P from soil erosion factor)		

Table 2 - Phosphorus Transport Potential Characteristics and Calculations

Site Characteristic	Description					Loss Value
	Negligible	Low	Moderate	High	Very High	
Soil runoff class	Negligible	Low	Moderate	High	Very High	
Loss rating value	0.1	0.2	0.3	0.5	1.0	LRV
Flooding frequency	None		Occasional	Frequent		
Loss rating value	0		0.1	2.0		LRV
Application method	Incorporated		Surface applied	Surface applied on frozen ground or snow		
Loss rating	0.1		0.2	0.5		LRV

value				
Application timing	July-Oct	April-June	Nov-March	
Loss rating value	0.1	0.4	0.5	LRV
Grazing Management	Hayed only	Grazed and hayed	Grazed only	
Loss rating value	0.1	0.2	0.3	LRV
P Transport = (runoff class + flooding frequency + application method + application timing + grazing management)				

Table 3 - Partial listing of runoff curve numbers.

Cover type	Hydrologic Condition	Soil Hydrologic Group			
		A	B	C	D
	Poor	68	79	86	89
Pasture	Fair	49	69	79	84
	Good	39	61	74	80
Hayland not grazed		30	58	71	78

Table 4 -Runoff class based on field slope and runoff curve number.

Slope %	Runoff Curve Number							
	<50	50-60	60-65	66-70	71-75	76-80	81-85	>85
<1	N	N	N	N	N	L	L	M
1.1-3	N	N	N	L	L	L	M	M
3.1-8	N	N	L	L	M	M	H	H
8.1-15	L	L	L	M	M	H	H	VH
>15	L	L	M	M	H	H	VH	VH
N=Negligible, L=Low, M=Moderate, H=High, VH=Very High								

Table 5. ESPI Interpretation and Nutrient Application

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Recommendations

P Index Scale	Site Interpretations and Recommendations
< 33	Low potential for P movement from site. Apply nutrients based on ESPI calculation. Caution against long-term P buildup.
34 to 55	Medium potential for P movement from site. Evaluate the Index and determine any areas that could cause long-term concerns. Add conservation practices or reduce P application to maintain the risk at 55 or below. Apply nutrients based on ESPI calculation.
56 to 100	High potential for P movement from site. Evaluate the Index and determine elevation cause. Add appropriate conservation practices and/or reduce P application. The immediate planning target is a PI value of 55 or less. If this target cannot be achieved with realistic conservation practices and/or reduced P rates in the short term, then a progressive plan needs to be developed with a long-term goal of a PI less than 55 . Apply nutrients to meet crop phosphorus needs according to NRCS Nutrient Management standard (590). Application rates based on crop phosphorus needs are generally less than 1 ton/ac. Since accurate, uniform applications at these low rates are rarely obtainable with conventional equipment, no litter (nutrient) application is recommended.
>100	Very High potential for P movement from site. No litter (nutrient) application. Add conservation practices to decrease this value to below 100 in the short term and develop a progressive conservation plan that would reduce the PI to a lower risk category, with a long-term goal of a PI less than 55 .

Example 1

The following site characteristics from farm A are:

- a) Soil test P = 300 lb/ac
- b) Soluble Manure P = 500 mg P/kg manure or 1 lb soluble P per ton of manure.
Application rate is 2 tons manure/ac
2 tons manure/ac * 1 lb soluble P/ ton = 2 lb soluble manure P/ac
- c) Soil erosion factor = RUSLE2 value is 0.10 ton/ac/yr
- d) Manure is surface applied
- e) Soil runoff class is Low (CN=74, Slope = 2%)
- f) No flooding occurs
- g) Application timing is May
- h) Grazing management is grazed and hayed

Calculating P Source Potential

Soil test P (300 lb P/ac * 0.0007)	=	0.21
Soluble manure P rate (2 lb soluble P/ac * 0.4)	=	0.8
Soil Erosion Factor (0.10 ton/ac/yr * 300 lb/ac)/1000	=	<u>0.03</u>
	=	1.04

Calculating P Transport Potential

Low runoff class	=	0.2
No flooding	=	0
Surface applied	=	0.2
Applied in May	=	0.4
Pasture is grazed and hayed	=	<u>0.2</u>
		1.0

ESPI = 0.92 * 1.1/(1.8*100) = 58

ESPI is 58, which is in the high risk category and nutrient applications are to be based on crop P needs. Since application rates based on phosphorus needs generally equate to <1 ton/ac and such application rates are not accurate, no litter is applied.

However, the ESPI for the same field could be re-calculated if a change in management was made, such as litter application rate. The application rate could be adjusted to 1.5 tons/ac. Calculating the ESPI for the field above with an application rate goal of 1.5 tons/ac would result in an ESPI of 47, which is in the medium risk category. Therefore, a litter application rate of 1.5 tons/ac would be allowed.

Background References:

Coale, F., and S. Layton. 1999. Phosphorus site index for Maryland. Report to the Northeast Phosphorus Index Work

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Group. Univ. of Maryland., College Park, MD.

DeLaune, P.B., P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley. 2001. Development and validation of a phosphorus index for pastures fertilized with animal manure. p. 239-247. In G.B. Havenstein (ed.) Proc. International Symposium Addressing Animal Production and Environmental Issues, Research Triangle Park, NC. 3-5 Oct. 2001. College of Agriculture and Life Sciences, NC State Univ, Raleigh, NC.

Gburek, W.J., A.N. Sharpley, and G.J. Folmar. 1998. Modifying the P index to account for transport pathways. Report to the SERA Transport Workgroup. USDA-ARS, University Park, PA.

Lemunyon, J.L., and R.G. Gilbert. 1993. The concept and need for a phosphorus assessment tool. J. Prod. Agric., 6: 483-486.

Mehlich, A. 1984. Mehlich 3 soil test extractant: A modification of Mehlich 2 extractant. Comm. Soil Sci. Plant Anal. 15:1409-1416.

Self-Davis, M.L., and P.A. Moore, Jr. 2000. Determining water-soluble phosphorus in animal manure. p. 74-76. In G.M. Pierzynski (ed.), Methods of Phosphorus Analysis for Soils, Sediments, Residuals, and Waters, Southern Cooperative Series Bulletin #396, Sept. 2000. (http://www.soil.ncsu.edu/sera17/publications/sera17-2/pm_cover.htm).

USDA-NRCS. 1999. Development of the phosphorus index. NRCS homepage. www.nhq.nrcs.usda.gov/BCS/nutri/manage.html.

[OAR Docket #07-1387; filed 9-17-07]

**TITLE 87. OKLAHOMA STATE
EMPLOYEES BENEFITS COUNCIL
CHAPTER 10. FLEXIBLE BENEFITS PLAN**

[OAR Docket #07-1383]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 27. Health Care Reimbursement Account Option
87:10-27-2. Definitions [AMENDED]
87:10-27-14. Health Savings Accounts Distributions [NEW]

AUTHORITY:

Oklahoma State Employees Benefits Council; 74 O.S. § 1361 et seq.

DATES:

Adoption:

August 17, 2007

Approved by Governor:

September 4, 2007

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Oklahoma Legislature passed legislation during the 51st Legislature, First Regular Session, requiring the Oklahoma State and Education Employees Group Insurance Board to offer a high deductible health plan to eligible State employees. The high deductible health plan will be available to State employees for Plan Year 2008, and will be communicated to all 37,000 active State employees during the option period. The option period for Plan Year 2008 is scheduled for October 8 through November 2. As a condition to participate in the high deductible health plan, employees must establish a health care savings account. Proof of the health care savings account must be provided to the Employees Benefits Council during the option period. The adopted emergency administrative rules to Chapter 10, which is considered the Benefits Plan Document of the Employees Benefits Council, are necessary to comply with the Internal Revenue Code regulations that govern health savings accounts, as amended by the Health Opportunity Patient Empowerment Act of 2006.

ANALYSIS:

The adopted emergency administrative rules to Chapter 10, which is considered the Benefits Plan Document of the Employees Benefits Council, are necessary to comply with the Internal Revenue Code regulations that govern health savings accounts, as amended by the Health Opportunity Patient Empowerment Act of 2006.

CONTACT PERSON:

Philip K. Kraft, Acting Executive Director, (405) 232-1190

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 27. HEALTH CARE
REIMBURSEMENT ACCOUNT OPTION**

87:10-27-2. Definitions

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

"Dependent" means an individual who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

"Health care reimbursement account" means the book-keeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"Medical care expenses" means any expenses incurred by a participant or by a spouse or dependent of such participant for medical care as described in Section 213 of the Internal Revenue Code and subject to the limitations of section 125 and this Flexible Benefits Plan, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense through insurance or otherwise.

"Grace Period" means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.

"Rollover Distributions" means distributions to a Health Savings Account of balances remaining at year end for employees who qualify pursuant to State and Federal Law.

"Run Out Period" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

87:10-27-14. Health Savings Accounts Distributions

The Council has discretion to permit rollover distributions to a Health Savings Account as allowed by State and Federal Law.

[OAR Docket #07-1383; filed 9-10-07]

**TITLE 210. STATE DEPARTMENT OF
EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION
AND INSTRUCTIONAL SERVICES**

[OAR Docket #07-1393]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 13. Student Assessment
210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration [AMENDED]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

DATES:

Adoption:

July 19, 2007

Approved by Governor:

September 4, 2007

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

Emergency Adoptions

FINDING OF EMERGENCY:

The proposed rule amendments revise the Oklahoma School Testing Program scope and general sequence to comply with the requirements set for in 70 O. S. § 1210.522 and to provide clear guidelines for schools to implement remediation programs.

ANALYSIS:

The proposed rule amendments will provide a description of the requirements to be met by school districts and the State Department of Education as relates to remediation of students who do not score at least satisfactory on the seventh grade Criterion-Referenced Tests in reading and mathematics and the eighth grade Criterion-Referenced Tests in reading and mathematics. The changes will provide public school educators with the guidance necessary to achieve further improvements in the quality of education for Oklahoma students

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

210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration

(a) All public school districts shall administer the state mandated academic achievement tests of the OSTP to all students enrolled in the designated grades. The series of tests shall be field-tested/implemented by the amended schedule in Title 70 O.S., Section 1210.508, or federal law.

(1) Students with Individualized Education Programs (IEPs) shall have an appropriate statement on the IEP requiring administration of the general assessment with or without accommodations or an alternate assessment as part of the Oklahoma School Testing Program (OSTP). Any accommodations normally employed and needed must exist on the IEP. All documentation for each student shall be on file in the local school before tests are administered.

(2) All students who have been determined to be limited English proficient (LEP), also known as English language learners (ELL), as identified in Public Law 107-110 shall be included in all of the state-mandated academic achievement tests of the OSTP. ELL students are those who have been appropriately identified, through English proficiency screening by the local school districts, as requiring specialized instructional services designed to increase their English proficiency and academic performance. For every student identified as ELL, the local district shall have on file verification that the student is receiving special instruction designed for the specific purpose of improving the ELL student's English proficiency.

(A) Students identified as ELL shall be assessed in a valid and reliable manner with the state academic assessments with acceptable accommodations as necessary and, to the extent practicable, with alternate assessments aligned to the state assessment provided by the local school district in the language and form

most likely to yield accurate data on what such students know and can do in these content areas; these alternate assessments will continue until such students have achieved English language proficiency with the exception noted in paragraph (B).

(B) If ELL students are administered the state-mandated reading and language arts achievement tests in a language other than English, this will be allowed only during their first three consecutive years of school attendance in the United States (not including Puerto Rico). After these first three years these tests must be administered in English, except that if the local school district determines on a case-by-case basis, that a student has not yet reached a level of English language proficiency that will allow valid and reliable information to be obtained, even with testing accommodations, in which case individual waivers will be allowed by the local district for up to two additional consecutive years, according to federal law.

(b) On an annual basis, school superintendents or their designees shall provide a copy of the State Board of Education Rules, OAC 210:10-13, for all school personnel responsible for receipt, inventory, distribution, or return of tests documents, and/or for administration of tests within the Oklahoma School Testing Program.

(c) Districts may request special reports beyond those provided by state contract with the testing company at their own cost (i.e., individual student records on CD or disk, District Title I Report, District Alpha Order Report, etc.).

(d) Test results of all students not enrolled in a district for a full academic year shall be disaggregated and shall not be used to determine the progress of the district, according to federal law. Test results of all students not enrolled in a school site for a full academic year shall be disaggregated and shall not be used to determine the progress of the school site, according to federal law. "Full Academic Year" is defined as continuous enrollment for two full consecutive semesters (i.e., from yearly test date to test date), except in the case of certain school, district, or instructional configurations where the definition is "continuous enrollment from the first day of the school." The specified school, district or instructional configurations where the later definition applies are as follows:

(1) when students move sequentially to the next higher grade in transition years from one site to the next within a district;

(2) when students move sequentially to the next higher grade in transition years from an elementary district to a K-12 district;

(3) when schools are held accountable for student competencies acquired in a specified course of instruction assessed by End-of-Instruction Tests.

(e) Test results of all students who have been placed in a facility within a district by state- or court-order, shall not be used to determine the progress of the site or the district. Instead their scores will be used in accountability calculations in one statewide "virtual" district.

(f) Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's seventh grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the eighth-grade criterion-referenced tests in reading and mathematics. Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's eighth grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the end-of-instruction tests administered in high school.

(1) Districts and/or schools may provide remediation through extended instructional time during the school day, a summer academy, tutoring, online coursework, or other supplementary services. Remediation is not limited to these practices.

(2) Remediation provided through instructional time during the school day, a summer academy, or school-based tutoring shall be under the supervision of a highly qualified teacher in mathematics or reading, as appropriate.

(3) The State Department of Education (SDE) shall provide information about best practices for remediation and interventions on the SDE website.

(4) Beginning spring 2007 and each year thereafter, a district plan of remediation shall be submitted to the State Department of Education's online reporting site for students who do not score at least at the satisfactory level on the seventh grade criterion-referenced tests in reading and mathematics. Beginning spring 2008 and each year thereafter, a district plan of remediation shall be submitted for students who do not score at least at the satisfactory level on the eighth grade criterion-referenced tests in reading and mathematics. Plans shall be reviewed and approved prior to release of state funds allocated for remediation.

(5) The per-student dollar amount shall be determined by the State Board of Education after the total number of students who qualify for remediation funding have been identified by final scores on the state criterion-references tests in reading and mathematics.

(6) Upon State Department of Education approval of the district remediation plan, to include estimated expenditures and assurances, funds shall be released to the district on a per-student basis for the costs associated with providing remediation. Any unallocated funds remaining at the end of the fiscal year shall return to the general fund.

(7) School districts shall monitor the results of the remediation, as measured by periodic progress assessments, and submit the findings annually to the State Department of Education's online reporting site. State Department of Education regional accreditation officers shall assist districts in compliance with reporting requirements.

(8) Any district not showing adequate improvement shall be required to submit a detailed plan of improvement for remediation programs and may be subject to onsite monitoring by the State Department of Education. Adequate improvement shall be defined as the percentage of

students provided remediation that are not successful on the eighth grade criterion-referenced tests in reading and mathematics, as compared with a targeted percentage of improvement established by the State Board of Education.

[OAR Docket #07-1393; filed 9-25-07]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION**

[OAR Docket #07-1394]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 31. Middle School Mathematics Laboratories for Public Schools With Low Student Achievement in Mathematics Program
210:15-31-2. Middle school mathematics laboratories for public schools with low Student achievement in mathematics program [AMENDED]

AUTHORITY:
70 O. S. § 3-104, State Board of Education

DATES:
Adoption:
July 19, 2007

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Immediately upon Governor's approval

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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The legislation is to be enacted for the 2007-2008 school year. The rule change must be in place prior to the state of the school year.

ANALYSIS:
The proposed rule change will eliminate the restriction to identify up to ten schools each year, allowing for more than ten schools with low student achievement in mathematics to be selected. Also, the maximum number of teachers and administrators in each building trained to use the system is lowered to ten.

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 31. MIDDLE SCHOOL MATHEMATICS LABORATORIES FOR PUBLIC SCHOOLS WITH LOW STUDENT ACHIEVEMENT IN MATHEMATICS PROGRAM

Emergency Adoptions

210:15-31-2. Middle school mathematics laboratories for public schools with low student achievement in mathematics program

(a) The State Department of Education shall identify ~~ten~~ public schools with low student achievement in mathematics at the middle school level that meet the following criteria:

- (1) Each school shall have at least fifty percent of its students performing below satisfactory on the eighth grade mathematics criterion referenced test of the Oklahoma School Testing Program in at least one of the two preceding years.
- (2) There shall be a limit of one school per school district each year.
- (3) There shall be representation from urban, suburban, and rural districts provided that such schools meet all other criteria.
- (4) There shall be representation from each quadrant of the state provided that such schools meet all other criteria.

(b) Each selected school shall:

- (1) provide a classroom facility for permanent occupation of the mathematics laboratory.
- (2) implement the computer education teaching system as recommended by the vendor and the State Department of Education.
- (3) develop a Mathematics Laboratory Team which may include up to ~~fifteen~~ten administrators, teachers, and technicians selected by school personnel to operate and utilize the computer education teaching system.
- (4) attend all professional development provided by the vendor and the State Department of Education for appropriate implementation of the program.
- (5) establish benchmark goals based upon preassessment data and state performance standards for the Oklahoma School Testing Program which will be submitted to the State Department of Education.

(c) Each participating school shall provide disaggregated data to the State Department of Education through quarterly reports.

[OAR Docket #07-1394; filed 9-25-07]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #07-1395]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 26. Academic Achievement Award Program
210:20-26-3. Qualified employees [AMENDED]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

New legislation has created the need to amend this rule. The language in Section D of House Bill 1593 amended the definition of "qualified employees". That amendment will affect how which employees qualify for payment of the award is determined.

ANALYSIS:

The rule change is a result of the amended definition of "qualified employees" in House Bill 1593, which was passed during the 2007 Legislative Session. A school district employee's qualification criteria for the Academic Achievement Award has changed with this legislation.

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 26. ACADEMIC ACHIEVEMENT AWARD PROGRAM

210:20-26-3. Qualified employees

(a) Once the school in each group has been identified, the State Department of Education will determine the number of employees qualified by law to receive the award at each school. Verification in writing of each employee's qualifications to receive the award shall be provided by the superintendent and/or principal. ~~Any certified employee who remains employed with the district for one half of the school year in which the award is given and employed at the site for one half of the school year from which the student test data was derived shall qualify for the award. The amount of funds available for the Academic Achievement Awards will be divided by the total number of qualified employees.~~

(b) Prior to January 31 of each year, the State Department of Education will forward the monetary award to each school with employees qualified to receive such award.

[OAR Docket #07-1395; filed 9-25-07]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #07-1396]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 27. Support Personnel
210:20-27-1. Support personnel; reporting requirements [AMENDED]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Rule amendments should be in place for the beginning of the 2007-2008 school year so school districts will be consistent in submitting their personnel data.

ANALYSIS:

The rule amendments will change the due date for school districts to submit their Support Personnel Reports from October 15 to October 1.

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 27. SUPPORT PERSONNEL

210:20-27-1. Support personnel; reporting requirements

(a) Reporting requirements.

(1) No later than October 15 of each year, all public school districts must file a "Preliminary (Pre-Print) Support Personnel Report" with the State Department of Education. The report shall list all support employees in their employ.

(2) No later than February 1 of each year, all public school districts must file a revised "Final Support Personnel Report" with the State Department of Education. The report shall contain any corrections, deletions, and additions that have occurred since the preliminary report was filed so that more accurate information is available for state aid calculations, legislative projections and other statistical requirements. State Aid funds shall be withheld from any school district that does not submit the "Final Support Personnel Report" by February 1. Only after the report has been received by the State Department of Education shall the withheld State Aid funds be released to the school district.

(3) No later than June 1 of each year, all public school districts must file a "Supplemental Support Personnel Report" with the State Department of Education showing the changes for support personnel previously listed as well as all information required on any new support employees not previously listed. This report shall contain any corrections or changes to be made to the "Final Support Personnel Report."

(b) Information to be reported. The following information is required on the Support Personnel Reports:

- (1) Name
- (2) Social Security Number
- (3) Building site code
- (4) Gender
- (5) Race
- (6) Position(s) and salary
- (7) Months, hours per day, and estimated hours per year assigned
- (8) Other information as deemed necessary
- (9) Job code and function
 - (A) 01 Noncertified Business Manager, District Treasurer and Administrative Assistant
 - (B) 02 Secretarial and Clerical
 - (C) 03 Teacher's Assistant
 - (D) 04 Maintenance and Plant Operation
 - (E) 05 Food Service
 - (F) 06 Regular Bus Drivers
 - (G) 07 Substitute and Activity Drivers
 - (H) 08 Noncertified Health Care, i.e. LPN, etc.
 - (I) 09 Technicians, such as occupations requiring knowledge and manual skills which can be obtained by approximately two years post-high school education (programmers, draftsman, inspectors, etc.)
 - (J) 10 Skilled Crafts, such as mechanics, electrician, etc.
 - (K) 11 Other Personnel
 - (L) 12 Early Childhood/CDA
 - (M) 13 OPAT Teacher (Oklahoma Parents As Teachers)
 - (N) 14 Physical Therapist (state licensed, but not certified by the State Department of Education)
 - (O) 15 Occupational Therapist (state licensed, but not certified by the State Department of Education)
 - (P) 16 Security
 - (Q) 17 Library Support Staff

[OAR Docket #07-1396; filed 9-25-07]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE**

[OAR Docket #07-1397]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Funding Criteria
210:25-3-4. Personnel [AMENDED]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

DATES:

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July 19, 2007

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Emergency Adoptions

Expiration:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Rule amendments should be in place for the beginning of the 2007-2008 school year. If not promulgated as soon as possible, the school districts will not have any mechanism in place to populate the teacher information because of the redesign of the Accreditation Application Teacher Assignment section.

ANALYSIS:

The purpose of the proposed rule change is to establish a way to pre-populate the Accreditation Application Teacher Assignment section for the school districts. This will make for more accurate data when school districts submit their class assignments.

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 3. FUNDING CRITERIA

210:25-3-4. Personnel

(a) Teachers who have not yet received their degrees shall be considered as having a degree if all requirements have been completed except participation in graduation exercises.

(b) A teacher who has taught more than one-half of a day for 120 days or more shall be considered as having had one year of experience. A teacher who has taught the equivalent of 120 days within not more than two contractual years shall be considered as having had one year of experience. Experience shall be counted if the individual was legally employed and paid from funds under the supervision of a school board of education or any school accredited by the State Board of Education. Practice teaching or a practicum in a teacher-training institution shall not be considered as experience. Veterans Agricultural training instructors or any teacher employed full-time by an accredited college or university shall be considered as having one (1) year of teaching experience for each year of service after July 1, 1945, if such teaching experience is approved by the State Board of Education, provided such teacher held a bachelor's degree at the time these services were performed and was eligible to have been issued a teaching certificate.

(c) Any district identified as contracting with a teacher, or administrator without a valid certificate shall be penalized in state aid. The state aid penalty amount shall be the salary amount paid by the district for the number of days the teacher or administrator taught without a valid certificate in excess of allowable substitute days.

(d) All teachers must have an official transcript on file with the Professional Standards Section showing the degree completed.

(e) No later than October ~~15~~1 of each year, all public school districts must file an accurate Initial Certified Personnel Report with the State Department of Education. The report shall list all certified personnel in the district and shall list for each person the position code, compensation, degree, certification information, years of qualified experience, number of days employed and other information as deemed necessary. Beginning with the 2004-2005 school year the school district will report to the State Department of Education the salary and benefit information disaggregated as required by law. For each employee not returning from the previous year, a reason for no return code shall be recorded.

(f) No later than February 1 of each year, all public school districts must file an accurate revised Final Certified Personnel Report with the State Department of Education. The report shall contain any corrections, departures, and additions that have occurred since the October ~~15~~1 report was filed so that more accurate information is available for state aid calculations, legislative projections and other statistical requirements. State Aid funds shall be withheld from any school district that does not submit the Final Certified Personnel Report by February 1. Only after the accurate report has been received by the State Department of Education shall the withheld State Aid funds be released to the school district.

(g) All public school districts must file an accurate End-of-Year Supplemental Certified Personnel Report showing the changes for certified personnel previously listed as well as all information required on any new certified employees not previously listed. This report shall contain any corrections or changes to be made to the February 1 Personnel Report. All employees that departed the school district prior to completion of the school year shall be given a "Reason-For-Leaving" code and have salary and days employed adjusted. School districts shall also file the Certified Substitute Teachers Report listing the number of days taught in the school year by all certified substitute teachers. These two reports shall be filed with the State Department of Education not later than June 15.

(h) If the district pays a teacher less than the minimum salary required by law, the difference shall be deducted from the next payment of state aid, or a claim shall be filed by the Director of Finance to recover any such overpayment to the school district.

(1) The School Personnel Records Section will notify the school superintendent of all potentially underpaid teachers after the Final Certified Personnel Reports are filed with the State Department of Education in February. The school superintendent shall notify the School Personnel Records Section of the district's intent to pay the teacher the underpaid amount or to dispute the amount. If disputed, the school superintendent is responsible for providing documentation to the School Personnel Records Section to show the teacher was not underpaid based on the state minimum salary schedule. The State Aid Section shall withhold from state aid the amount underpaid by October 1 in the school year following the year in which the underpayment occurred.

(2) The method for calculating teacher salaries to ensure state minimums are met shall be determined by the School Personnel Records Section.

(i) If a teacher asserts that the school district he or she is employed by and was employed by the previous year, (or if underpayment occurred prior to July 1, 2002, and the teacher filed an action to recover an underpayment in a court of competent jurisdiction before July 1, 2002), has reduced the salary and/or fringe benefit level without a proportionate reduction in hours or duties, the teacher may file a complaint with the State Department of Education's School Personnel Records Section. The complaint must be accompanied by documentation sufficient to justify the allegations in the complaint. The teacher shall also send a copy of the complaint and supporting documentation to the superintendent of the school district. The documentation shall include, but not be limited to, the teacher's salary and benefit amount for each year in question. The superintendent shall be given an opportunity to submit documentation to refute the teacher's claim within 20 calendar days of receipt of the complaint. The School Personnel Records Section shall review all the documentation presented and present the complaint to the State Board of Education for determination of whether the school district willfully reduced the teacher's salary and benefits in violation of the law. If the school district does not provide a response and supporting documentation to the complaint, the complaint shall be upheld. In the event the review of the documents reveals that the complaint is valid, the State Board of Education shall withhold the amount underpaid from the district's state aid as a penalty. Additionally, the same amount shall be withheld and that amount shall be sent to the teacher.

(j) Any superintendent, principal, or teacher shall not be considered as having received their minimum salary unless such salary is paid by school district warrants issued by the board of education or the school district.

(k) Personnel on the staff of the Oklahoma Department of Career and Technology Education shall be approved by the State Board of Education for increment purposes.

(l) Certified personnel teaching in Manpower Skill Centers and other Manpower Development Training Programs approved by the Oklahoma Department of Career and Technology Education shall be considered as teaching in a school approved by the State Board of Education for increment purposes as provided by Oklahoma School Law.

[OAR Docket #07-1397; filed 9-25-07]

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

[OAR Docket #07-1398]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 19. Standard X: School Facilities

210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety [AMENDED]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

According to Senate Bill 103, each local school district board of education shall develop a policy and procedures for lock down drills for the 2007-2008 school year, effective July 1, 2007.

ANALYSIS:

The proposed rule amendments require all students and personnel to participate in lock down drills at least once each year.

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 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 19. STANDARD X: SCHOOL FACILITIES

210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety

(a) The site and building(s) shall be properly sized and equipped for the number of occupants and grades served. [Reference: 11:22-117 School Speed Limit Signs in Municipalities; 25:91.2 Display of Oklahoma Flag on School Premises Compulsory; 25:153 School to Display Flag; 47:11-801 Speed Limit for School Buses--School Zones Outside Municipalities--Signs; 70:5-131 Educational Courses--Buildings and Equipment; 70:5-131.1 Sewage Disposal System; 74:324.8 State/Municipality Adoption of Building Codes--BOCA, SBCCI or ICBO; 74:324.11 Permits for Construction or Alterations of Building]

(b) The site and building(s) shall be readily accessible, allowing access for handicapped persons to required programs. [Reference: 70:13-103 Authorized Provisions for Education of Exceptional Children]

(c) Adequate space shall be provided for classrooms, specialized instructional areas, support facilities and other areas as needed, these areas being grouped and arranged in such manner

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to provide optimum instructional function and class control. [Reference: 70:5-131 Educational Courses--Buildings and Equipment; 70:18-152 Legislative Intent--School Facilities; Other citings--State Department of Education SPACE GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES; Vocational Rehabilitation Act of 1973, Section 504; American National Standards Institute (ANSI) A117.1.]

(d) School facilities shall be able to accommodate changes in curriculum and/or equipment within a program. [Reference: 70:18-152 Legislative Intent--School Facilities; 70:18-153 Capital Improvement Plan]

(e) Programs for preventive and corrective maintenance shall be developed and implemented to ensure that the site and building(s) will be clean, in good repair, and maintained with consideration for function and aesthetic values. [Reference: 70:18-152 Legislative Intent--School Facilities]

(f) Equipment, furnishings, and supplies in proper quantity and quality shall be maintained; and a system shall be developed and implemented for inventory, issue, usage, storage, repair, and replacement.

(g) A long-range plan for replacing and/or updating the site, building(s), and equipment shall be developed. [Reference: 70:18-153 Capital Improvement Plan]

(h) The site and building(s) shall ensure that the health and safety of those served are properly safeguarded. Where required, the facility shall have utility systems, plumbing systems, electrical systems, mechanical systems, emergency systems, building interiors and building envelope designed, built, and maintained to recognized standards, codes and/or other legal requirements. [Reference: 59:1002 Authorizes State Department of Health to Adopt Codes--BOCA Plumbing Code; 59:1681 Authorizes State Board of Health to Adopt Codes--Selections from NFPA; 59:1850.3 Authorizes State Board of Health to Adopt Codes--BOCA Plumbing Code; 61:152 through 157 Oklahoma Lighting Energy Conservation Act; 70:3-104 State Board of Education--Powers and Duties; 70:5-131.1 Sewage Disposal System; 74:324.7 Fire Marshal; 74:324.8 State/Municipality Adoption of Building Codes--BOCA, SBCCI or ICBO; 74:324.11 Permits for Construction of Alteration of Buildings] Other citings--State Department of Education SPACE GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES]

(i) The site shall be as free as possible from hazards, provide a safe area for (un)loading of vehicles, with adequate lighting, signage and drainage. [Reference: 11:22-117 School Speed Limit Signs in Municipalities; 47:11-801 Speed Limit for School Buses--School Zones Outside Municipalities--Signs; 74:324.8 State/Municipality Adoption of Building Codes--BOCA, SBCCI or ICBO]

(j) Appropriate programs pertaining to hazardous materials, hazardous waste, asbestos, underground storage tanks, lead contamination, and other applicable life, health, and/or safety matters shall be developed and implemented. [Reference: 40:403 and 404 Oklahoma Occupational Health and Safety Standards Act; Other citings--29 CFR 1910 Occupational Safety and Health Standards, Oklahoma Corporation Commission's General Rules and Regulations Governing Underground Storage Tanks; 40 CFR 260-272 Asbestos Hazard Emergency

Response Act 9 (AHERA), Lead Contamination and Control Act of 1988(LCCA), Resources Conservation and Recovery Act of 1976 (Hazardous and Solid Waste Amendments of 1984)]

(k) Proper precautions shall be taken to prevent injuries. All equipment and facility safety features shall be in place and properly maintained. [Reference: 70:24-117 Safety Goggles--School Board to Provide for Certain Personnel; 70:24-118 Respirators--School Board to Provide for Certain Teachers and Students; 70:324.7 Fire Marshal; 74:324.11 Smoke Detectors]

(l) The school's administration shall ensure that qualified personnel conduct a safety/emergency/disaster procedure review at least annually and safety inspections of site, building(s), and equipment regularly. [Reference: 63:176 Fire Drills; 74:324.7 Fire Marshal]

(m) All public school districts shall conduct a minimum of two tornado drills per school year, in which all students and school employees participate. Such drills shall conform to the written plans and procedures adopted by the district for protecting against natural and man-made disasters and emergencies as required by Title 63 O.S. § 681. Each school district shall document in writing and by school site, compliance with this requirement and such records shall be available to the Regional Accreditation Officer during the accreditation process.

(n) All public schools shall have a minimum of one lock-down drill each school year. All students and employees are required to participate in the drills, with the extent of student involvement to be determined by the district. Each school district board of education and administration shall adopt policies and procedures for lockdown drills. Each public school district shall document lockdown drills in writing by public school site. Compliance with this requirement and such records shall be available to the Regional Accreditation Officer during the accreditation process.

[OAR Docket #07-1398; filed 9-25-07]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 40. GRANTS AND PROGRAMS-IN-AID

[OAR Docket #07-1399]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 89. Robotics Grant Program [NEW]

210:40-89-1. Purpose [NEW]

210:40-89-2. Robotics Programs for Public Schools [NEW]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

DATES:

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July 19, 2007

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The purpose of the new rules is to add criteria for the Robotics Grant Program to meet legislative changes from the 2007 Session. Enrolled House Bill 1133 requires the State Board of Education to adopt rules to facilitate implementation of the law.

ANALYSIS:

The Robotics Grant Program will provide grant funding for high schools for participation in robotics competitions. The rules for the Robotics Grant Program outline the requirements for implementation of the program. Schools will be selected for participation and receive funding based on a statewide competitive application process. Funds will be utilized by the schools for registration fees and related expenses associated with participation in Oklahoma regional and national robotics competitions. Upon completion of the project, schools will provide use of funding and project outcome reports 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 89. ROBOTICS GRANT PROGRAM

210:40-89-1. Purpose

This rule prescribes procedures to be used in selecting schools to participate in the grant for Robotics programs for public schools at the high school level. Pursuant to the provisions of the state statute, grants to school districts are for the purpose of providing funds to establish remote-controlled robot projects.

210:40-89-2. Robotics Programs for Public Schools

(a) The State Department of Education shall select public schools based on the following criteria:

- (1) Schools shall be selected based on a competitive grant process.
- (2) There shall be representation from urban, suburban, and rural districts provided that such schools complete the grant application.
- (3) There shall be representation from each quadrant of the state provided that such schools complete the grant application.

(b) Each selected school shall:

- (1) Establish teams of students who will design and build a remote-controlled robot.
- (2) Utilize funds for registration fees and related expenses for remote-controlled robot competitions.
- (3) Utilize teachers and volunteers to provide assistance to the student teams.

(4) Participate in Oklahoma regional and national robotics competitions.

(5) Provide an end-of-project report on project implementation and utilization of funds to the State Department of Education.

[OAR Docket #07-1399; filed 9-25-07]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 40. GRANTS AND PROGRAMS-IN-AID**

[OAR Docket #07-1400]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 91. Comprehensive Statewide School District Character Education Grants [NEW]

210:40-91-1. Purpose [NEW]

210:40-91-2. Procedures for solicitation, determination of eligibility, and acceptance of applications for Districtwide Comprehensive Character Education Programs [NEW]

210:40-91-3. Procedures for evaluation and recommendation of eligible grant applications [NEW]

210:40-91-4. Procedures for awarding grants [NEW]

AUTHORITY:

70 O. S. § 3-104, State Board of Education

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

House Bill 1704 (2005) established the intent to fund model comprehensive character education programs and House Bill 1133 (2007) established funding.

ANALYSIS:

The new rule will establish comprehensive, districtwide pilot character education programs on a statewide competitive basis, outline the requirements for establishing the criteria and the selection process.

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 91. COMPREHENSIVE STATEWIDE SCHOOL DISTRICT CHARACTER EDUCATION GRANTS

Emergency Adoptions

210:40-91-1. Purpose

This rule prescribes procedures for a competitive grant process to be used in selecting classroom(s), programs, sites within school districts, or entire school districts statewide to implement model comprehensive character programs.

210:40-91-2. Procedures for solicitation, determination of eligibility, and acceptance of applications for Districtwide Comprehensive Character Education Programs

(a) At such time that state funds are appropriated for the Character Education Grant program grants to be awarded by the State Board of Education and administered by the State Department of Education, a notification letter will be sent to each district superintendent announcing the availability of the grant application. Such notice will also be posted on the State Department of Education website at <www.sde.state.ok.us>.

(b) The notification will clearly state the name and telephone number of the contact person for the Character Education Grant at the State Department of Education who administers the program.

(c) Only one application per district per grant will be accepted. The signature of the district superintendent must appear on the application.

(d) School districts, sites within a district, programs and classrooms may be eligible as a pilot for the grant with the intent of replication throughout the district.

210:40-91-3. Procedures for evaluation and recommendation of eligible grant applications

(a) The State Department of Education shall identify and make grant awards to pilot sites based on the following criteria and the availability of funding:

(1) Programs, sites or classrooms within school districts, or entire school districts shall be selected as a comprehensive character education pilot based on a competitive grant process.

(2) The grant application shall be designed by the Oklahoma State Department of Education staff. Local Boards of Education shall submit the application to the SDE Grant Review and Selection Committee, Office of Innovation, Support, and Alternative Education.

(3) A Grant Review and Selection Committee will be chosen by the State Superintendent. The committee shall identify the grantees who meet the criteria for selection to establish innovative pilot character education programs and make a recommendation to the State Superintendent of Public Instruction and the State Board of Education for approval and funding. The number of grants to be awarded will be based on the total appropriated funds.

(b) Each school district applying for the Character Education grant shall:

(1) Describe the process that will enable the classroom, program, site within the district, or the entire district to become a "pilot."

(2) Describe the strategies or methods that will promote and maintain a character education model.

(3) Describe the materials, curricula and models to be used in the program.

(4) Describe the leadership roles and expectations of program participants in the school district, program, classroom, or site.

(5) Provide examples of communication and public relations efforts that will highlight the elements of character being promoted.

(6) Describe the methodology as well as the commitment to submitting the data necessary to support being named to the Character Education Honor Roll.

(7) Describe an objective procedure for documenting how the Character Education Grant program benefits the children served. Data and documentation will be collected, compiled and submitted to the State Department of Education.

(c) Districts, programs, sites or classrooms within a district that successfully implement a comprehensive character education program will be eligible for recognition by the Oklahoma State Board of Education for the "Character Education Honor Roll."

210:40-91-4. Procedures for awarding grants

After committee review and scoring of the eligible applications, the State Superintendent will provide a list of recommended eligible applicants to the State Board of Education for approval and possible funding.

[OAR Docket #07-1400; filed 9-25-07]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #07-1389]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Appendix A. Pay Band Schedule [REVOKED]

Appendix A. Pay Band Schedule [NEW]

AUTHORITY:

The Administrator of the Office of Personnel Management; 74 O.S., §§ 840-1.6A, 840-2.1, 840-2.17, 840-5.16 and 4121.

DATES:

Adoption:

July 16, 2007

Approved by Governor:

September 1, 2007

Effective:

Immediately upon the Governor's approval.

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTION:

None

INCORPORATIONS BY REFERENCE:

None

FINDING OF EMERGENCY:

The proposed amendments are necessary to assure that the pay band within the Merit Rules is in compliance with the provisions of House Bill 1114, which amended the State Employee Minimum Wage Rate to that of a three-person household as established by the Federal Poverty Guidelines, which are issued by the United States Department of Health and Human Services.

ANALYSIS:

The proposed amendments reflect a increase to the minimum salary of the first five pay bands to that of a three-person household as established by the Federal Poverty Guidelines.

CONTACT PERSON:

Kara I. Smith, General Counsel, Office of Personnel Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (405) 522-1736.

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

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APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

PAY BAND	MINIMUM	MIDPOINT	MAXIMUM
A	\$12,483*	\$16,367	\$20,459
B	\$12,865	\$17,153	\$21,441
C	\$13,610	\$18,147	\$22,684
D	\$14,673	\$19,564	\$24,455
E	\$16,141	\$21,521	\$26,901
F	\$17,754	\$23,672	\$29,590
G	\$19,531	\$26,041	\$32,551
H	\$21,484	\$28,645	\$35,806
I	\$23,792	\$31,722	\$39,653
J	\$26,156	\$34,874	\$43,593
K	\$28,590	\$38,120	\$47,650
L	\$31,448	\$41,931	\$52,414
M	\$34,907	\$46,543	\$58,179
N	\$38,748	\$51,664	\$64,580
O	\$43,397	\$57,862	\$72,328
P	\$49,039	\$65,385	\$81,731
Q	\$55,415	\$73,886	\$92,358
R	\$62,618	\$83,490	\$104,363

*Adjusted for state minimum wage of \$6.00/hour

[OAR Docket #07-1389; filed 9-18-07]

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

[OAR Docket #07-1391]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

600:15-1-2. Definitions [AMENDED]

600:15-1-4. Grievance procedure [AMENDED]

AUTHORITY:

Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)

DATES:

Adoption:

August 3, 2007

Approved by Governor:

September 11, 2007

Effective:

November 1, 2007

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature

SUPERCEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

It is the finding of the Real Estate Appraiser Board that a compelling public interest requires this emergency rule due to the necessity of providing protections for lenders and consumers in this state who may be involved in mortgage financing transactions.

ANALYSIS:

The purpose of this regulatory language is to provide language in the disciplinary rules of the Board to allow the Board to comply with the requirements of case law as established by the Oklahoma Supreme Court in Johnson v. Board of Governors of Registered Dentists 913P2d 1339 (Okla. 1996).

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 EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF NOVEMBER 1, 2007:

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.

"**Geographic area**" means the county of an individual appraiser as determined by the mailing address most recently reported to the Board.

"**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 four (4) ~~three (3)~~ members: a ~~past member of the Board~~, a current member of the Board, and three (3) members selected by the Board a Certified Appraiser from past members of the Board and the members of the Standards and Disciplinary Procedures 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. Provided further, that members shall be selected from four (4) different geographic areas.

"**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, 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. Grievance procedure

(a) A 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 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 grievances until the Board votes it a formal complaint.

(c) The Probable Cause Committee will review all grievances.

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(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 grievance and to make an informed recommendation regarding disposition of the grievance.

(f) The Probable Cause Committee will meet as needed depending on the volume of 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 grievance.

(g) The Board may direct the Department to turn over any or all grievances to the Probable Cause Committee for disposition in accordance with procedures found in 600:15-1-4 and 600:15-1-5.

(h) Probable Cause Committee members shall recuse from consideration, including both voice and vote, of any grievance concerning a Respondent from the same geographic area as the member.

(i) Board staff shall prepare and maintain records of attendance and individual votes on each matter presented to the PCC.

[OAR Docket #07-1391; filed 9-20-07]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #07-1388]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Waste Tire Recycling

710:95-5-3 [AMENDED]

710:95-5-11 [AMENDED]

710:95-5-13 [REVOKED]

710:95-5-14 [REVOKED]

710:95-5-15 [REVOKED]

710:95-5-16 [REVOKED]

710:95-5-17 [REVOKED]

710:95-5-18 [REVOKED]

710:95-5-19 [NEW]

710:95-5-20 [REVOKED]

710:95-5-21 [REVOKED]

710:95-5-22 [REVOKED]

AUTHORITY:

27A O.S. § 2-11-401.6; 68 O.S. § 203; Oklahoma Tax Commission

DATES:

Adoption:

July 31, 2007 (Commission Order No. 2007-07-31-02)

Approved by Governor:

September 6, 2007

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Compelling public interest was found to warrant emergency promulgation of these rules to facilitate the transfer of duties from the Oklahoma Tax Commission to the Department of Environmental Quality as prescribed by Senate Bill 747 (51st Legislature, 1st Regular Session), which amended the Oklahoma Waste Tire Recycling Act, 27A O.S. §§ 2-11-401 through 2-11-415.

ANALYSIS:

Rules pertaining to administration of the Waste Tire Recycling Indemnity Fund which has been transferred from the Tax Commission to the DEQ are deleted. The rule pertaining to the waste tire recycling fee is amended to reduce the fee on a tire rim greater than 17½" but less than or equal to 19½". A new rule is added pertaining to compliance and collection of waste tire fees.

CONTACT PERSON:

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

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

SUBCHAPTER 5. WASTE TIRE RECYCLING

710:95-5-3. ~~Applicability of the waste~~ Waste tire recycling fee

(a) **Applicability of the fee.** The fee levied by the Oklahoma Waste Tire Recycling Act is assessed in the following instances:

(1) All sales of tires for motor vehicles, whether used on or off road, except "implements of husbandry" as defined by Section 1-125 of Title 47 of the Oklahoma Statutes.

(2) All first registrations of motor vehicles required to be registered, except those registered under a proportional registration plan, as provided by 47 O.S. § 1120.

(b) **Amounts.** The amount of the fee due will be determined based upon the size of the tire rim or use of the tire, as follows:

(1) \$1.00 per tire, where the tire rim diameter is less than or equal to seventeen and one-half (17½) inches;

(2) ~~\$3.50~~ \$2.50 per tire, where the tire rim diameter is greater than seventeen and one-half (17½) inches; ~~or but less than or equal to nineteen and one-half (19½) inches.~~

(3) \$3.50 per tire, where the tire rim diameter is greater than nineteen and one-half (19½) inches.

(4) \$1.00 per tire, for tires to be used on motorcycles, minibikes, motor-driven cycles, or motorized bicycles.

(c) **Report.** The Commission shall provide a report, on a monthly basis, to the DEQ of the fees remitted by each tire dealer and motor license agent.

(d) **Payments.** Upon receipt of monthly reports from the DEQ, the Commission will issue payments from the Fund to qualified applicants.

710:95-5-11. Reporting and remitting

Tire sales must be reported and the fees remitted to the Oklahoma Tax Commission by the 15th 20th of the month following the month in which the sales are made.

710:95-5-13. Procedure to be used by waste tire facilities and "TDF facilities" to request compensation for the collection and transportation of waste tires and either the processing and sale of processed waste tires or the use of the tires as fuel or for the manufacture of new products [REVOKED]

(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a properly permitted waste tire facility must make application to the Commission, no more often than monthly, on forms prescribed for that purpose.

(b) **Magnetic media requirements.** A magnetic media file, containing the information required to be filled in on the Waste Tire Reimbursement Manifest, must be submitted with the application.

(c) **Required supporting documentation.** Until the Commission authorizes otherwise in writing, a data sheet must be submitted, to which are attached copies of manifests showing the information described in (1) through (3) of this subsection:

- (1) **Identification of tires.** The data sheet must state the date acquired, number, and size of tires;
- (2) **Sources of tires.** The name and the location of the source from which discarded tires were obtained, whether they were collected and transported by the waste tire facility or not, must be provided. Sources may include:
 - (A) Tire dealers;
 - (B) Persons making voluntary payments pursuant to 710:95-5-12;
 - (C) Priority clean up sites;
 - (D) Community wide clean up events; or
 - (E) Automotive dismantlers and parts recyclers.
- (3) **Signature from source required.** The signature of the owner, manager, or the person responsible for the location where the tires were obtained, or the signature of the person who brought the tires to the facility, if they were not collected and transported by the facility, must be submitted on the manifest, data sheets, or on supporting documentation.

(d) **Accuracy of manifests and tire weights.** The manifests required by this Section must be complete and accurate in all details and must be accompanied by weight tickets from certified scales which show the poundage of the load collected and transported or accepted for processing by the waste tire facility.

(e) **Inaccurate, incomplete, or insufficient manifest.** The Commission shall not compensate waste tire facilities for tires which are processed where the manifests for those tires are incomplete, unreadable, not accompanied by a weight ticket, or in any other respect cannot be relied upon to show that the

tires were collected, transported and processed pursuant to the Waste Tire Recycling Act.

(f) **Reimbursable processing of tires limited to those discarded in Oklahoma.** The compensation request shall also state that the processor making the request is in compliance with and has successfully processed vehicle tires which were discarded by the consumer in Oklahoma, not some other state.

(g) **Other required information.** Additional documentation or information may be required by the Commission.

(h) **Sworn signature required.** The application must be signed by an officer, owner, or partner of the processor, stating under penalty of perjury, that all the information contained in the request is true and correct.

710:95-5-14. Procedure to be used by businesses that utilize waste tires to request compensation [REVOKED]

(a) **Qualification.** Businesses that utilize waste tires shall be qualified to apply for compensation, not to exceed the total amount invested in capital equipment necessary to utilize processed waste tires, pursuant to this Section.

(b) **Limitations.** The following limitations shall apply to compensation paid pursuant to this Section:

- (1) The compensation shall be payable each month for an amount equal to \$20.00 per ton of waste tires used.
- (2) The total amount a business may receive in compensation is an amount not in excess of One Hundred percent (100%) of its capital investment in equipment necessary to utilize waste tires, provided no compensation shall be payable for capital investment in equipment which was purchased before January 1, 1995.
- (3) If the funds available for any month are not sufficient to fully pay all requests for compensation, the available funds will be awarded on a proportionate share of the funds available and based on the relative amount of tons of waste tires utilized.
- (4) If the balance of the monies remaining which have been allocated for the purpose of compensating businesses that manufacture new products or which derive energy benefits from processed waste tires is insufficient to fully compensate all claimants for a particular month, they shall be compensated in the manner set out in (b)(3) of this Section and no further compensation shall be granted in the future for the processed waste tires on which compensation was previously requested.

(c) **Application process.** All persons who believe that they do qualify or will qualify for compensation shall file an application/intent to request compensation with the Commission on forms to be provided by the Commission and shall include as attachments, specification of the operation that utilizes waste tires, a listing of the equipment and the capital investment therein which is necessary to utilize processed waste tires which they believe qualifies to be included in the amount on which compensation will be based, and copies of purchase invoices which show the cost of the equipment listed.

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(d) **Review.** The application will be reviewed upon receipt for completeness and compliance with the requirements contained in 27A O.S. §2-11-401.4. An on-site review will be conducted by personnel of the Commission if it is deemed necessary to determine that the equipment is necessary to the utilization of processed waste tires. The applicant will be notified of any action taken in regard to the application, and if approved, will be given a list of the capital equipment and the costs which the Commission has determined to be eligible for compensation.

710:95-5-15. Review and determination of requests for compensation; protest procedure following denial of compensation request [REVOKED]

(a) **Review and determination of requests for compensation.** Upon receipt of a proper request for compensation, the Oklahoma Tax Commission shall review the request and determine whether the application reflects compliance with the statutory requirements of the Waste Tire Recycling Act and all applicable rules pertaining thereto promulgated by the DEQ, the Commission, and the ODH. Further, the Commission shall verify that the applicant is not in violation of any tax laws of the State of Oklahoma. The applicant shall be notified in writing of the Commission's determination, and the reasons therefore.

(b) **Protest procedure.** The following procedure shall apply when a request for compensation is denied by the Commission:

(1) Any applicant whose request for compensation is denied may, within thirty (30) days after the mailing of the denial by the Commission, file a protest under oath, signed by the applicant or a duly authorized agent, setting out:

- (A) A statement of denial as determined by the Commission;
- (B) A statement of the applicant's disagreement with such denial, and
- (C) Supporting documentation relied on by the applicant in support of the request for compensation.

(2) The protest shall be filed with the Commission at its main offices at 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

(e) **Failure to timely protest.** If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(d) **Determination of protest and appeal procedure.** The following practice and procedure shall apply to the hearing of a protest of the denial of a request for compensation and appeal therefrom:

(1) Applicants filing a protest to the denial of a request for compensation by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to

the hearing. The burden of proving that the denial was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested compensation.

(2) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. An applicant aggrieved by the order of the Commission must file, within ten (10) days of the mailing of the order, a notice of intent to appeal, with the Secretary of the Commission. The appeal must be perfected within thirty (30) days of the mailing of the order by simultaneously filing a petition in error with the Clerk of the Supreme Court of the State of Oklahoma, and a designation of the record with the Secretary of the Commission. [See: 68 O.S. § 225]

710:95-5-16. Required procedures for monthly certification to the Commission by DEQ [REVOKED]

(a) Prior to approving compensation to any waste tire facility or to any entity using waste tires for erosion control, bank stabilization, or other approved conservation project, the Commission must receive monthly certification from the DEQ, certifying that the applicant for compensation meets the qualification criteria set out in this Section:

(1) If the applicant is a waste tire facility, it must have a valid permit as a solid waste disposal site, be in good standing, and be in compliance with the requirements of the permit, including the requirements set out in OAC 252:520-21-5:

- (A) The facility's fire protection plan must be currently approved;
- (B) The facility must maintain the fifty (50) foot fire lane around the perimeter of each tire pile and the shredder;
- (C) The buffer zone must be maintained;
- (D) Visual screening must be developed;
- (E) Vector control must be effective, as shown by the latest mosquito monitoring reports received by the local office of the DEQ; and
- (F) No water must have been discharged off the site without the consent of the owner of the sewer system, unless pursuant to a discharge permit issued by the DEQ.

(2) If the entity is requesting compensation for utilizing waste tires in erosion control, bank stabilization, or other approved conservation project:

- (A) The entity must have obtained a permit or other authorization for the utilization of wastes tires for purposes of erosion control, bank stabilization, or other conservation project from either the United States Army Corps of Engineers or a local Conservation District, as the landowner, or on behalf of the landowner to provide these services on the property of the landowner.

(B) The entity must have been evaluated by the DEQ within the last three (3) years and must be certified as being authorized to receive reimbursement pursuant to 27A O.S. §2-11-407.1.

(C) The DEQ must not have received any information which would indicate that the entity has not successfully processed discarded vehicle tires of rim diameter greater than 17 $\frac{1}{2}$ inches, in accordance with the written plan filed in connection with the permit or authorization described in (A) of this paragraph.

(b) The facility must, by the 10th of the following month, have submitted to the local office of the DEQ, the report required by OAC 252:520-21-6, giving the number of tires received.

(c) There must be no indication that the facility has exceeded the restrictions found in OAC 252:520-21-6, concerning volume, segregation, shape, and size of tire and processed material piles.

(d) The facility must have filed narrative descriptions of its development and operations, its intended use of processed materials, and a secondary plan of disposal, and such plans must have been approved by the DEQ.

(e) The DEQ must have no information which indicates that the facility has not successfully processed discarded vehicle tires pursuant to the Waste Tire Recycling Act.

(f) For compensation requests for collection and transportation, the applicant must satisfy DEQ that it is regularly engaged in the collection, transportation, and delivery of waste tires on a statewide basis and from each county of the state.

(g) DEQ's review of facilities must establish:

(1) That the applicant has not accumulated more processed material than the amount for which they have provided financial assurance under their solid waste permit or the amount accumulated from three years of operation, whichever is less; and

(2) That the applicant has been evaluated within the last three years and has provided for, in addition to the processing of tires, the recycling, reuse or energy recovery from waste tires as these terms are defined in OAC 252:520-21-2.

710:95-5-17. Documentation to be provided to the Commission [REVOKED]

In order to facilitate the administration of the Waste Tire Recycling Act, the following documentation, along with any update which may occur, will be provided by the DEQ to the Commission:

(1) A copy of any priority enforcement list or information on any authorized community wide clean up event;

(2) A copy of the Statewide Collection Plan of each waste tire facility;

(3) A copy of the narrative description of the processor's design, development, and operational plan; an example of the approved daily log; and a copy of the intended use and secondary plan of disposal narratives, as required by OAC 252:520-21-6 for each waste tire facility;

(4) A copy of the waste tire processing facility permit;

(5) A copy of any progress reports which must be filed by the facility;

(6) A copy of any permit or other authorization from either the United States Army Corps of Engineers or a local Conservation District, approving a written plan for utilizing waste tires for the purpose of erosion control, bank stabilization, or other conservation project.

(7) The Monthly Certification and Authorization to Compensate Waste Tire Facilities or Entities utilizing waste tires for erosion control, bank stabilization, or other conservation project.

710:95-5-18. Transfers between tire dealers using reimbursement manifest [REVOKED]

(a) Transfers of waste tires between tire dealers using a reimbursement manifest will not require additional payment of waste tire fees by the transferee when they are sold, so long as the tires being transferred were generated as a result of a transaction on which the proper fee has been paid.

(b) Use of the reimbursement manifest by the transferee conveys the right to have the number and type of waste tires shown on the form picked up by the waste tire facility from the transferee's locations.

(c) The properly completed DEQ reimbursement manifest will be accepted by the Commission as evidence that the waste tire fees have been paid on the used tires which are sold by used tire dealers.

710:95-5-19. Compliance

Upon receipt of a determination from the DEQ that a tire dealer or motor license agent has demonstrated a flagrant or repeated disregard of Section 2-1-401.2 of Title 27A, the Tax Commission will commence proceedings to collect finally established waste tire fee liabilities in accordance with the recommendations of the DEQ. The Tax Commission will, in a timely manner, report the results of the proceedings to the DEQ.

710:95-5-20. Procedures to request compensation for use by entities which process and utilize waste tires in erosion control, bank stabilization or other conservation projects [REVOKED]

(a) **General provisions.** To be eligible for reimbursement pursuant to 27A O.S. §2-11-401.7(c)(3), the entity seeking reimbursement must give notice to the Commission and make application, no more often than monthly on forms, or in the format, prescribed for those purposes.

(b) **Notice of intent to file compensation request.** The applicant must file a "Notice of Intent to File Waste Tire Indemnity Fund Compensation Request" to which is attached, a copy of the permit issued by the United States Army Corps of Engineers or a local Conservation District and the written agreement of the landowner in which the landowner agrees to plant trees or other vegetation in accordance with a planting plan developed in conjunction with the state Department of Agriculture, Food and Forestry.

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(c) **Contents of required affidavit.** The applicant must file an affidavit setting out:

(1) The number of tires having a rim diameter greater than 17 1/2" inches which were collected, transported and used in the approved project.

(2) The number of tires having a rim diameter of 17 1/2" inches or less which were collected, transported and used in the approved project.

(3) A sworn statement that five percent (5%) of the tires used in the project were collected from tire dumps or landfills listed on the "Priority Cleanup List" defined at 27A O.S. §2-11-401.1, or collected from community wide cleanup events approved by DEQ.

(4) A sworn statement that collection and transportation of waste tires which were used in the project were collected on a statewide basis, from each county of the state, at no cost to the tire dealers.

(5) A statement that the tires for which reimbursement is being claimed have actually been used at the approved site in accordance with a written plan approved by the United States Army Corps of Engineers.

(6) A statement that the applicant is in compliance with the requirements promulgated by DEQ pursuant to the Oklahoma Environmental Quality Code regarding the storage, transportation and disposal of waste tires.

(7) A statement that the applicant is in compliance with all tax laws of the state of Oklahoma.

(8) A statement that the compensation shall be payable only for tires actually utilized in conformity with the purposes of the Oklahoma Waste Tire Recycling Act.

(9) The total amount of compensation requested.

(d) **Supporting documentation.** Copies of complete, accurate, and legible Oklahoma Waste Tire Tracking Manifests showing the types, amounts, and source of the tires utilized, for which reimbursement is being requested, must accompany the affidavit.

(e) **Other information may be required.** Additional documentation may be required by the Commission.

(f) **Sworn signature required.** The affidavit required by (b) of this Section must be signed by an owner, officer, or partner of the processor, stating, under penalty of perjury, that all the information contained in the affidavit and request is true and correct.

(g) **Compensation.** Compensation pursuant to this paragraph shall be payable only for the tires collected and utilized in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department. During the course of the erosion control project, the Department may determine the amount of and authorize partial compensation, as tires are utilized in accordance with the written plan.

(h) **Reimbursement.** Any entity deemed eligible for reimbursement under the provisions of this paragraph shall be liable for the erosion control project for a period of five (5) years. During the five year period, if additional cleanup or remediation of an erosion control project is required due to failure or negligence on the part of the original contractor, the original contractor shall be responsible for cleanup costs and shall not

be eligible for any additional compensation from the Fund for costs related to that erosion control project.

710:95-5-21. Procedure to be used by units of local or county government to request compensation for tires that are baled and used in approved engineering projects [REVOKED]

(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a unit of local or county government must make application to the Commission, no more often than monthly, on forms prescribed for that purpose. The application for compensation shall provide the information described in (1) through (7) of this subsection.

(1) Number of tires covered by the application;

(2) Total number of tires baled;

(3) Total amount of compensation requested for processing, equal to the total number of tires baled times Fifty Cents (\$.50);

(4) A description of the engineering project, a statement that the project has been approved by DEQ, and the location thereof; and,

(5) A statement that none of the tires for which compensation is being requested has been obtained from manufacturers, retailers, wholesalers, retreaders, or parts dismantlers.

(b) **Other required information.** Additional documentation or information may be required by the Commission.

(c) **Sworn signature required.** The application must be signed by an employee of the government agency who has knowledge of the number of tires baled and of the approved engineering project, stating under penalty of perjury, that all the information contained in the application is true and correct.

710:95-5-22. Apportionment of funds among claimants [REVOKED]

(a) **General provisions.** The apportionment of funds in the waste tire indemnity fund shall be made in the following manner:

(1) Four and one half percent (4.5%) to the Oklahoma Tax Commission and three and one half percent (3.5%) to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act.

(2) Fifty Thousand Dollars (\$50,000.00) per audit to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-401.6 of Title 27A.

(3) Up to ten percent (10%) for capital investment reimbursement to waste tire facilities and TDF facilities for the purchase of equipment necessary to utilize waste tires. Only equipment purchased on or after January 1, 1995, shall be eligible. The facilities are eligible for compensation at a rate of Twenty Dollars (\$20.00) per ton of waste tires used. Total reimbursement shall not exceed one hundred percent (100%) of the capital investment in eligible equipment. The facilities may apply for compensation

monthly to the Commission, and shall supply any information required by the Commission.

(4) After the allocations in the three paragraphs above are made, the balance of monies in the Fund shall be available for compensation pursuant to the provisions of the Oklahoma Waste Tire Recycling Act as follows:

(A) Compensation to waste tire facilities for waste tire processing, at the rate of Fifty four Dollars (\$54.00) per ton of processed tire material. For compensation the following conditions shall apply:

- (i) facilities that process waste tires by altering the form of the waste tires but do not produce crumb rubber shall not receive compensation until the facility documents the sale and movement of the processed tire material off site to a third party;
- (ii) facilities shall report and certify tire processing activity in terms of weight. The facility shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has processed tires and sold processed tires for actual recycling or reuse in accordance with the purposes of the Oklahoma Waste Tire Recycling Act, and
- (iii) to be eligible for compensation, a facility shall not have accumulated more processed material than the amount for which the facility has provided financial assurance under its solid waste permit or the amount accumulated from three (3) years of operation, whichever is less;

(B) Compensation to waste tire facilities or TDF facilities at the rate of Fifty three Dollars (\$53.00) per ton of whole waste tires for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or TDF facility. The collection and transportation of waste tires shall be provided by the waste tire facility or TDF facility at no additional cost to the tire dealer or automotive dismantler and parts recycler or to the Fund. The waste tire facility or TDF facility shall collect from any location at which there are at least three hundred waste tires.

- (i) Compensation under paragraph B of subsection 4 shall not be payable until the waste tires have been actually processed according to the solid waste permit for the facility or actually used for energy or fuel recovery. A TDF facility that collects and transports whole waste tires shall be eligible for compensation under this paragraph only for those whole waste tires consumed by that facility.
- (ii) No tire dealer shall charge any customer any additional fee for the management, recycling, or disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Commission. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Commission, the tire

dealer shall issue a receipt which entitles the customer to deliver the waste tire to the dealer at a later date.

(iii) To be eligible for compensation pursuant to paragraph B of subsection 4, the waste tire facility or TDF facility shall:

- (I) demonstrate to the satisfaction of the Department that the facility is regularly engaged in the collection, transportation and delivery of waste tires to a waste tire facility or to a TDF facility, on a statewide basis, and from each county of the state;
- (II) provide documentation to the Commission, signed by a dealer at the time of collection, which certifies by sworn affidavit the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the waste tires of the dealer were last collected, and
- (III) annually demonstrate that at least five percent (5%) of the tires were collected from tire dumps or landfills on the Department priority cleanup list or community wide cleanup events approved by the Department.

(iv) In lieu of proof of remitted tire recycling fees, the waste tire facility or TDF facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts Recycler Act, for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996

(C) Compensation to a person, corporation or other legal entity who has obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District to provide services for erosion control projects. Compensation shall be at the rate of Two Dollars and eighty cents (\$2.80) per tire for waste tires having a tire rim diameter of greater than seventeen and one half (17 1/2) inches, and eighty cents (\$0.80) per tire for tires having a rim diameter less than or equal to seventeen and one half (17 1/2) inches. The application for reimbursement shall comply with the provisions of Section 710:95-2-20.

(D) Compensation to a unit of local or county government. The application for reimbursement from the fund shall be in accordance with the provisions of Section 710:95-2-21.

(5) If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under paragraph (4), the Commission shall apportion the payments among the qualified applicants under paragraph (4) according to the percentage of waste tires processed, collected and transported, or utilized.

(6) After the allocations under paragraph (4) are made, any remaining monies in the Fund shall be available for TDF facilities and waste tire facilities that produce crumb

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rubber for compensation at the rate of Twenty nine Dollars (\$29.00) per ton of processed or whole waste tires used for energy or fuel recovery or the production of crumb rubber.

(A) The production of crumb rubber shall be considered a compensable event separate from and in addition to any compensation for waste tire processing under subsection C of this section.

(B) TDF facilities and waste tire facilities authorized to receive reimbursement under this subsection shall report and certify tire material used by weight.

(C) The facilities shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has used the tires in accordance with the purposes of the Oklahoma Waste Tire Recycling Act.

(D) If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Commission shall apportion the payments among the qualified applicants according to the percentage of waste tires used for energy or fuel recovery or the production of crumb rubber.

(7) After the allocations under paragraphs (3), (4) and (6) are made, any remaining monies in the Fund shall be

disbursed as additional compensation to waste tire facilities or TDF facilities for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or a TDF facility. The Commission shall apportion the payments under this subsection among the qualified applicants according to the percentage of waste tires collected and transported.

(b) **Compliance with Oklahoma Waste Tire Recycling Act required.** Waste tire facilities, TDF facilities, or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement shall demonstrate that the facilities or legal entities have successfully complied with the requirements of the Oklahoma Waste Tire Recycling Act through the filing of appropriate applications, reports, and other documentation that may be required by the Commission and the Department. [68 O.S. 27A Sections 2-11-401.1 et seq.]

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