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

[OAR Docket #08-1235]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 9. Excess Emission Reporting Requirements
- 252:100-9-1. Purpose [AMENDED]
- 252:100-9-1.1. Applicability [NEW]
- 252:100-9-2. Definitions [AMENDED]
- 252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-7]
- 252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-8]
- 252:100-9-7. Excess emission reporting requirements [NEW]
- 252:100-9-8. Affirmative defenses [NEW]
- Subchapter 25. Visible Emissions and Particulates
- 252:100-25-3. Opacity limit [AMENDED]
- Subchapter 33. Control of Emission of Nitrogen Oxides
- 252:100-33-1.1. Definitions [AMENDED]
- 252:100-33-1.2. Applicability [AMENDED]
- 252:100-33-2. Emission limits [AMENDED]
- Appendix E. Primary Ambient Air Quality Standards [REVOKED]
- Appendix E. Primary Ambient Air Quality Standards [NEW]
- Appendix F. Secondary Ambient Air Quality Standards [REVOKED]
- Appendix F. Secondary Ambient Air Quality Standards [NEW]
- Appendix Q. Incorporation by Reference [REVOKED]
- Appendix Q. Incorporation by Reference [NEW]

SUMMARY:

The Department is proposing to amend OAC 252:100-9, Excess Emission Reporting Requirements, to clarify its requirements and make them more compatible with EPA guidelines.

The Department is proposing to amend OAC 252:100-25-3 to correct a rule citation. The Department is proposing to revise OAC 252:100-33, Control of Emission of Nitrogen Oxides, to resolve issues regarding emission standards for nitrogen oxides from fuel-burning equipment. The changes would address emission standards for direct-fired fuel-burning equipment, fuel-burning equipment that uses more than one

type of fuel, and equipment with technological limitations. The Department is also considering changes to address emissions from low-NO_x burners and ultra low-NO_x burners when these are operated at low heat input values.

The Department proposes to update Appendices E and F to be consistent with federal standards for ozone.

The Department is proposing to update Appendix Q to incorporate the latest changes to federal regulations by reference. Among the changes are the addition of New Source Performance Standards (NSPS) and Part 63 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for area sources.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on October 15, 2008. For comments received at least 5 business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Copies of the written responses will be provided to the Council and the public at that Council meeting. Oral comments may be made at the October 15, 2008, hearing and at the November 18, 2008, Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, October 15, 2008, at the DEQ headquarters, 707 N. Robinson St., Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, November 18, 2008, at the City of Tahlequah Armory Municipal Center, 100 N. Water St., Tahlequah, Oklahoma 74464.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 CFR § 51.102 of the EPA regulations and 27A O.S., § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

Notices of Rulemaking Intent

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing at the Air Quality Division of the Department at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm, or copies may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained by contacting Cheryl E. Bradley at (405) 702-4100.

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl E. Bradley at cheryl.bradley@deq.state.ok.us. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl Bradley. The Air Quality Division FAX number is (405)702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #08-1235; filed 8-22-08]

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

[OAR Docket #08-1236]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Incorporation by Reference
252:205-3-1 [AMENDED]
252:205-3-2 [AMENDED]

SUMMARY:

The purpose of the proposed amendments is to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2008, to clarify that delisted zinc phosphating sludge will continue to be regulated as hazardous waste if it is characteristically hazardous, and to correct a typographical error discovered in OAC 252:205-3-2.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties; 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105 and 2-7-106

COMMENT PERIOD:

Written comments may be delivered or mailed to the contact person from September 4, 2008, through October 16, 2008. Oral comments may be made at the meeting of the Hazardous Waste Management Advisory Council, October 16, 2008, and

at the Environmental Quality Board meeting, November 18, 2008.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 16, 2008, at 10:00 a.m. at the Oklahoma City office of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 18, 2008, at 9:30 a.m. at the City of Tahlequah Armory Municipal Center, 100 N. Water Street, Tahlequah, Oklahoma 74464.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE:

The proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/LPDnew/LPProprules.htm>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/LPDnew/LPProprules.htm>.

CONTACT PERSON:

Mike Edwards (405) 702-5226, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is mike.edwards@deq.state.ok.us.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For the hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #08-1236; filed 8-22-08]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-1237]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 1. Administrative Operations [AMENDED]

SUMMARY:

The rules and regulations are necessary to promote and enhance effective operation of the State and Education Employees Group Insurance Program. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency and responsiveness of the insurance program, to conform to certain legislation, and to reflect changes in benefit plans.

AUTHORITY:

74 O.S. Section 1304; 74 O.S. Section 1306. State and Education Employees Group Insurance Board

COMMENT PERIOD:

Written comments may be made from this date until October 17, 2008. Comments should be filed in the office of Gary Goff, Attorney, Assistant Administrator, State and Education Employees Group Insurance Board, located at 3545 NW 58th Street, Suite 1000, Oklahoma City, Oklahoma 73112.

PUBLIC HEARING:

8:00 am, October 17, 2008, in the 5th Floor Board Room of the State and Education Employees Group Insurance Board, 3545 NW 58th Street, Oklahoma City, Oklahoma. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Gary Goff, Attorney, Assistant Administrator
State and Education Employees Group Insurance Board
3545 NW 58th Street, Suite 1000
Oklahoma City, OK 73112

RULE IMPACT STATEMENT:

This agency has issued a Rule Impact Statement which may be obtained for review by contacting Gary Goff of the State and Education Employees Group Insurance Board.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

[OAR Docket #08-1237; filed 8-22-08]

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, DENTAL, VISION AND LIFE PLANS**

[OAR Docket #08-1238]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. State and Education Employees Health, Dental, Vision and Life Plans [AMENDED]

SUMMARY:

The rules and regulations are necessary to promote and enhance effective operation of the State and Education Employees Group Insurance Program. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency and responsiveness of the insurance program, to conform to certain legislation, and to reflect changes in benefit plans.

AUTHORITY:

74 O.S. Section 1304; 74 O.S. Section 1306. State and Education Employees Group Insurance Board

COMMENT PERIOD:

Written comments may be made from this date until October 17, 2008. Comments should be filed in the office of Gary Goff, Attorney, Assistant Administrator, State and Education Employees Group Insurance Board, located at 3545 NW 58th Street, Suite 1000, Oklahoma City, Oklahoma 73112.

PUBLIC HEARING:

8:00 am, October 17, 2008, in the 5th Floor Board Room of the State and Education Employees Group Insurance Board, 3545 NW 58th Street, Oklahoma City, Oklahoma. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Gary Goff, Attorney, Assistant Administrator
State and Education Employees Group Insurance Board
3545 NW 58th Street, Suite 1000
Oklahoma City, OK 73112

RULE IMPACT STATEMENT:

This agency has issued a Rule Impact Statement which may be obtained for review by contacting Gary Goff of the State and Education Employees Group Insurance Board.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

[OAR Docket #08-1238; filed 8-22-08]

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 15. THE DISABILITY PLAN**

[OAR Docket #08-1239]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 15. The Disability Plan [AMENDED]

SUMMARY:

The rules and regulations are necessary to promote and enhance effective operation of the State and Education

Notices of Rulemaking Intent

Employees Group Insurance Program. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency and responsiveness of the insurance program, to conform to certain legislation, and to reflect changes in benefit plans.

AUTHORITY:

74 O.S. Section 1304; 74 O.S. Section 1306; 74 O.S. Section 1332 State and Education Employees Group Insurance Board

COMMENT PERIOD:

Written comments may be made from this date until October 17, 2008. Comments should be filed in the office of Gary Goff, Attorney, Assistant Administrator, State and Education Employees Group Insurance Board, located at 3545 NW 58th Street, Suite 1000, Oklahoma City, Oklahoma 73112.

PUBLIC HEARING:

8:00 am, October 17, 2008, in the 5th Floor Board Room of the State and Education Employees Group Insurance Board, 3545 NW 58th Street, Oklahoma City, Oklahoma. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Gary Goff, Attorney, Assistant Administrator
State and Education Employees Group Insurance Board
3545 NW 58th Street, Suite 1000
Oklahoma City, OK 73112

RULE IMPACT STATEMENT:

This agency has issued a Rule Impact Statement which may be obtained for review by contacting Gary Goff of the State and Education Employees Group Insurance Board.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

[OAR Docket #08-1239; filed 8-22-08]

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

[OAR Docket #08-1232]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
87:10-1-2. Definitions [AMENDED]

AUTHORITY:

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

DATES:

Adoption:

June 24, 2008

Approved by Governor:

August 8, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

June 3, 2008, Governor Henry signed House bill 3112, which changed the age to which state employees may cover their dependents from age twenty-three (23) to age twenty-five (25), with an effective date of July 1, 2008. The Employees Benefits Council serves as the Internal Revenue Code, Section 125, plan administrator for active state employees and their eligible dependents. Not making these emergency administrative rule changes would cause the administrative rules that serve as the plan administrator's "plan document," Chapter 10 of Title 87, to be inconsistent with state law.

ANALYSIS:

This proposed emergency administrative rule amends the definition of a "dependent" to change the maximum age to which dependents may be covered by active state employees under the state's flexible benefits plan from twenty-three (23) years of age to twenty-five (25) years of age in accordance with Section 13 of House bill 3112 of the 2nd regular session of the 51st Oklahoma Legislature, signed by Governor Brad Henry on June 3, 2008.

CONTACT PERSON:

Craig A. Cates, Executive Manager, Agency and Regulatory Affairs, (405) 609-3440

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 1. GENERAL PROVISIONS

87:10-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise, and wherever appropriate, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include the other gender.

"**Account**" means a record keeping account established on the books of the Plan Administrator.

"**Act**" means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.

"**Authorized Submission Procedure**" means an acceptable method of submitting enrollment and/or change documents which may include submission via electronic transmissions to the Plan Administrator.

"**Board**" means the Oklahoma State and Education Employees Group Insurance Board.

"**Cafeteria plan**" means an employer-maintained benefit plan under which participants are employees and the participants may choose between cash and nontaxable benefits, as defined in Internal Revenue Code Section 125(d) and regulations promulgated thereunder.

"**Change in Status**" means a change that a participant may be allowed to make during a Plan Year provided that the change is based on prevailing IRS guidance, is allowed by the Plan Administrator, and complies with all eligibility rules and consistency requirements.

"**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985 as it applies to an employees right to continue certain coverage under the Flexible Benefits Plan.

"**Dependent**" means the primary member's spouse (if not legally separated), including common law. Dependents also include a member's unmarried child up to the child's ~~twenty-third~~ [23rd] twenty-fifth [25th] birthday, regardless of residence, provided that the member is primarily responsible for the child's support. This includes a stepchild or child who lives with the member in a regular parent-child relationship, or a child living with the member in a normal parent-child relationship where the member has adopted the child, or has been appointed guardian by a court. It also includes a stepchild who does not live with the member, when the primary member's spouse is covered by the Plan and has been ordered by a court to provide health insurance for his/her children, regardless

Emergency Adoptions

of residence. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age ~~twenty three~~ [23] ~~twenty-five~~ [25]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S.Supp.2006, §1303(13)].

"**Effective date of the plan**" means January 1, 1990 or as restated.

"**Employer**" or "**Employing agency**" has the same meaning as "Participating employer" as defined in Section 1363(14) of Title 74.

"**Enrollment period**" means the period of time, as determined and announced by the Plan Administrator each Plan Year during which eligible employees shall make an election of benefits. The period of time shall end no later than thirty (30) days before the beginning of the Plan Year for which the elections are to be effective.

"**Entry date**" means the first day of the Plan Year except for an employee who first satisfies the requirements for eligibility during the Plan Year (including rehired employees), in which case the entry date shall be the first day of the month next following the satisfaction of the application requirements for eligibility, in accordance with 87:10-3-1.

"**FMLA**" means the Family and Medical Leave Act of 1993.

"**Flexible Benefits Plan**" means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.

"**Flexible Benefits Plan Rules**" means the rules promulgated by the Plan Administrator to implement and administer the State Employees Flexible Benefits Plan.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986 of the United States, 26 USC, I et seq. as amended from time to time.

"**Irrevocability Rule**" means the rule that requires an enrollment election in any Plan benefit to remain in force throughout the entire Plan Year.

"**Period of coverage**" means the Plan Year during which coverage of benefits under the Flexible Benefits Plan is available to a participant. An employee who becomes eligible to participate during a Plan Year may participate for a period lasting until the end of that Plan Year. In this case, the interval commencing on the employee's entry date and ending as of the last day of eligibility for that Plan Year.

"**Permitted Exception**" means an exception allowed to the Irrevocability Rule by the Plan. Any changes based on these exceptions must be on account of and correspond with the underlying event.

"**Plan Administrator**" means the Oklahoma State Employees Benefits Council.

"**QMCSO**" means a Qualified Medical Child Support Order.

"**Statutory nontaxable benefit**" means a benefit provided to a participant under the Flexible Benefits Plan, the value of which is not included in the participant's gross income by a specific provision in the Internal Revenue Code and is permissible under the Flexible Benefits Plan in accordance with Section 125 of the Internal Revenue Code.

"**USERRA**" refers to the Uniformed Services Employment and Reemployment Rights Act of 1994.

[OAR Docket #08-1232; filed 8-21-08]

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

[OAR Docket #08-1233]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 26. Qualified transportation account option [NEW]
- 87:10-26-1. Qualified transportation account option [NEW]
- 87:10-26-2. Definitions [NEW]
- 87:10-26-3. Reimbursements for participation [NEW]
- 87:10-26-4. Amount of benefit available [NEW]
- 87:10-26-5. Internal revenue code and regulations [NEW]
- 87:10-26-6. Elections/mid year changes [NEW]
- 87:10-26-7. Qualified transportation account option [NEW]
- 87:10-26-8. Claims for reimbursement [NEW]
- 87:10-26-9. Reimbursement or payment of mass transit expense [NEW]
- 87:10-26-10. Forfeiture of unused benefits [NEW]
- 87:10-26-11. Report to employees [NEW]

AUTHORITY:

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

DATES:

Adoption:

June 24, 2008

Approved by Governor:

August 8, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Because the price of fuel for motorized vehicles has risen approximately 30 percent in the last year (currently approaching \$4 a gallon) and Americans commute an average of thirty-two (32) miles, roundtrip, to work, the Employees Benefits Council finds that a compelling public interest exists to provide financial relief to active state employees, as outlined in the following analysis.

ANALYSIS:

These adopted emergency administrative rules add a new subchapter, twenty-six (26), to Chapter 10 of title 87. This new subchapter will allow the Employees Benefits Council to offer a new benefit: mass transportation flexible spending accounts. These accounts will enable active state employees to purchase monthly mass transit passes on a pre-tax basis. The implementation of these new administrative rules is projected to have a positive economic impact on active state employees, enrolled in the state's flexible benefits plan, who choose to participate in mass transportation flexible spending accounts. By not driving their personal vehicles to work and using mass transit instead, participating employees will realize savings through significantly lower fuel, maintenance, and auto insurance costs. In addition, because these accounts are pre-tax, the amount participating employees pay in taxes will be reduced. In addition, these rules will have a positive impact

on the environment as more active state employees use mass transportation the number of vehicles on the state's streets and highways and the air pollution they create will decline.

CONTACT PERSON:

Craig A. Cates, Executive Manager, Agency and Regulatory Affairs, (405) 609-3440

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. QUALIFIED TRANSPORTATION ACCOUNT OPTION

87:10-26-1. Qualified Transportation account option

(a) This option allows an employee to receive reimbursements for qualified mass transportation expenses which are excludable from gross income. This option is intended to be qualified under Section 132 of the Internal Revenue Code and is an optional benefit within the State Employee Flexible Benefits Plan. As a result, it is excluded as part of the cafeteria plan described in OAC 87:10-1-1.

(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

87:10-26-2. Definitions

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

"Eligible period of coverage" means that time period in which the employee contributes to the Qualified Transportation account and that the employee is on an active pay status.

"Mass Transit expense" means any pass, token, fare card, voucher, or similar item (including an item exchangeable for fare media) entitling a person to transportation. The pass must be used for transportation on a public or privately-owned mass transit system, or on transportation provided by a person in the business of transporting people in a vehicle, seating at least six adults, excluding the driver and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.

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

"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.

87:10-26-3. Requirements for participation

Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the Qualified Transportation account option.

87:10-26-4. Amount of benefit available

The maximum amount which an employee may receive in a Plan Year in the form of Mass Transit expense reimbursement or payment under the Qualified Transportation account option shall be the maximum amount as determined on a yearly basis by the Internal Revenue Service pursuant to 26 U.S.C. Section 132(f) and 26 C.F.R. Section 1.132-9.

87:10-26-5. Internal Revenue Code and regulations

The Qualified Transportation option, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

87:10-26-6. Elections/mid year changes

(a) Employees may elect to participate during the open enrollment Option Period prior to the plan year.

(b) New Hires and employees not previously enrolled may elect to participate during the plan year.

(c) Employees who have elected to participate may drop the option any time during the plan year. However, once the account has been dropped, the employee may not re-enroll during the same plan year. Any amounts remaining in the account after the option has been dropped are subject to forfeiture pursuant to OAC 87:10-26-10.

(d) Employees' requests to participate, or drop participation, in Qualified Transportation accounts must be made in a manner and on forms prescribed by the Plan Administrator.

87:10-26-7. Qualified Transportation account option

Each Plan Year, the Plan Administrator shall establish a Qualified Transportation account for each employee who elect to participate in a Qualified Transportation account. During the Plan Year, the applicable payroll office shall on a monthly basis deduct from the employee's payroll the amount designated by the employee and credit the employee's Qualified Transportation account. An employee's Qualified Transportation account for a Plan Year shall be reduced by the amount of any qualified Mass Transit expenses paid to the employee.

87:10-26-8. Claims for reimbursement

Claims for reimbursement of qualified Mass Transit expenses incurred during the period of coverage shall be made in a manner and on forms prescribed by the plan administrator.

Emergency Adoptions

87:10-26-9. Reimbursement or payment of Mass Transit expense

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the employee from the employee's Qualified Transportation account for Mass Transit expenses incurred during the Plan Year for which the employee submits documentation in accordance with OAC 87:10-26-8. No reimbursement or payment of Mass Transit expenses incurred during a Plan Year shall exceed the balance available in the employee's Qualified Transportation account. The reimbursement must be for the state employee to utilize Mass Transit. Reimbursement for spousal or dependant expenses is not allowed. The Mass Transit pass must be a monthly pass; passes less than one month will not be reimbursed.

(b) The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.

(c) Upon demand an employee shall immediately refund any overpayment made by the Plan Administrator on behalf of the employee.

(d) If an employee ceases to be an active state employee or terminates employment with the state, such employee shall be entitled to continue receiving benefits pursuant to the Qualified Transportation account option to the extent of the amount remaining in the employee's Qualified Transportation account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.

87:10-26-10. Forfeiture of unused benefits

Amounts remaining in an employee's Qualified Transportation account following final payment of all Mass Transit expenses incurred during the periods described in OAC 87:10-26-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan. An employee who elects to continue to enroll into a Qualified Transportation account in subsequent years, without periods of interruption, will be permitted to roll over unused amounts from previous years subject to the limitations in OAC 87:10-26-4

87:10-26-11. Report to employees

On or before January 31 of each year, or at such other time as may be specified by federal law or regulation, the Plan Administrator shall furnish each employee who has received Qualified Transportation payments during the prior Plan Year a written statement showing the amount of reimbursement during the prior Plan Year. Statements reflecting account balances shall be provided to employees no less than once each calendar quarter.

[OAR Docket #08-1233; filed 8-21-08]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 55. MORTGAGE BROKERS

[OAR Docket #08-1228]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 9. Enforcement
160:55-9-10 [NEW]

AUTHORITY:

Administrator of Consumer Credit; 59 O.S., §2091(A)(2)

DATES:

Adoption:

July 9, 2008

Approved by Governor:

August 11, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Administrator of Consumer Credit finds that there is a compelling public interest requiring an emergency adoption of a new rule. Recent research revealed that the Mortgage Broker Licensure Act was amended in 1998 to require the promulgation of rules for monies to be expended from the Oklahoma Mortgage Brokers Recovery Fund when reimbursement of monetary damages is sought against a person required to have a license under the Act.

ANALYSIS:

The new rule establishes a procedure for expending monies from the Oklahoma Mortgage Brokers Recovery Fund in connection with reimbursement of approved claims.

CONTACT PERSON:

Roy John Martin, Assistant Attorney General, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-521-3653.

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):

SUBCHAPTER 9. ENFORCEMENT

160:55-9-10. Oklahoma Mortgage Brokers Recovery Fund

(a) Purpose. This section establishes a procedure required by 59 O.S. § 2091(A)(2) for expending monies from the Oklahoma Mortgage Brokers Recovery Fund ("Fund") in connection with reimbursements of approved claims.

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

- (1) "Claimant" means a person who has been adjudged by a court of competent jurisdiction to have suffered monetary damages as specified by 59 O.S. §

2091(B)(1) and who has filed a claim for reimbursement from the Fund.

(2) **"Court of competent jurisdiction"** means a court having power and authority to hear and decide a civil action filed by a claimant.

(3) **"Final judgment"** means a written final determination by a court of competent jurisdiction of the rights of the claimant and the judgment debtor arising from a transaction or series of transactions as described by 59 O.S. §2091(B)(1). A final judgment under this section shall not include a default or a judgment by default unless the time to file a motion or petition to set aside, correct, open, modify or vacate the default or judgment by default has run and no proceedings to set aside, correct, open, modify or vacate the default or judgment by default have commenced.

(4) **"Judgment debtor"** means a person obligated through a final judgment to pay monetary damages to a claimant.

(c) **Required documentation.** To apply for reimbursement from the Fund, a claimant shall file a written claim to the Administrator. The claim shall include the following documentation:

- (1) A certified copy of the affidavit or petition filed in a court of competent jurisdiction;
- (2) Certified copies of the final judgment and any orders issued by a court of competent jurisdiction;
- (3) Evidence that the final judgment has been enforced as provided by statute for enforcement of judgments in civil actions and the amount realized was insufficient to satisfy the final judgment; and
- (4) Evidence that any compensation recovered by the claimant from the judgment debtor, or from any other source for monetary loss arising out of the transaction or series of transactions has been applied to the final judgment awarded by a court of competent jurisdiction.

(d) **Commission review.** The Administrator is authorized to determine the sufficiency of the claim and submitted documentation. After the Administrator receives the required documentation indicated in paragraph (c) of this section, he or she shall make a recommendation to the Commission concerning approval or denial of the claim. The Commission may take one of the following actions:

- (1) Approve or deny the claim based on the Administrator's recommendation;
- (2) Approve or deny the claim independent of the Administrator's recommendation; or
- (3) Request additional information and or documentation it deems necessary to render a decision in accordance with the requirements of 59 O.S. § 2091 and Oklahoma law.

(e) **Notification.** The Administrator shall submit written notification to the claimant of the Commission's decision regarding the claim.

(f) **Expenditures.**

(1) If the Commission approves a claim, expenditures from the Fund shall be made by the Administrator in accordance with 59 O.S. § 2091 and Oklahoma law.

(2) If at any time monies in the Fund are insufficient to satisfy existing obligations and encumbrances on the Fund or an approved claim, or portion(s) thereof, the Administrator may satisfy such unpaid claims or portion(s) thereof as soon as a sufficient amount of money has been deposited in the Fund. When there is more than one outstanding approved claim, the Commission may determine the order of payment.

(g) **Restrictions.** A claimant shall not be qualified to file a claim for reimbursement from the Fund if:

- (1) The claimant is the spouse of the judgment debtor or a personal representative of such spouse;
- (2) The claimant is a licensee that acted in their own behalf in the transaction or series of transactions that are the subject of the claim;
- (3) The claimant has previously been reimbursed the maximum amount allowed from the Fund involving the same transaction or series of transactions.

[OAR Docket #08-1228; filed 8-18-08]

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

[OAR Docket #08-1234]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 9. Additional Standards for Secondary Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate
210:35-9-31. Program of studies and graduation requirements
[AMENDED]

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

DATES:

Adoption:
June 26, 2008

Approved by Governor:
August 8, 2008

Effective:
Immediately upon Governor's approval

Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
Schools are required to implement the rules beginning with the 2008-2009 school year.

ANALYSIS:
The proposed rule amendments establish teacher qualifications for teaching the integrated Personal Financial Literacy areas of instruction or a separate course for Personal Financial Literacy instruction.

CONTACT PERSON:
Connie Holland, 405-521-3308

Emergency Adoptions

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

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

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

Every student at every high school shall have the opportunity to acquire all the competencies to matriculate at a comprehensive graduate institution of the Oklahoma State System of Higher Education without the necessity of enrolling at the university in secondary-level courses. Each student will have the opportunity to attain proficiency in the Priority Academic Student Skills.

(1) Effective with the school year 2000-2001 through 2001-2002 a high school student must demonstrate competency in at least 21 units of credit or sets of competencies in Grades 9-12 which must include the state-mandated curriculum (Priority Academic Student Skills) and meet all other state and local mandates to be eligible for graduation.

- (A) Language Arts: 4 units or sets of competencies
- (B) Science: 2 units or sets of competencies
- (C) Mathematics: 3 units or sets of competencies
- (D) Social Studies: 2 units or sets of competencies (must include American History and Oklahoma History)
- (E) The Arts: 2 units or sets of competencies (Visual Art and General Music)
- (F) Total minimum Core Curriculum: 13 units or sets of competencies
- (G) Total minimum Elective courses: 8 units or sets of competencies
- (H) Total minimum graduation requirements: 21 units or sets of competencies

(2) Beginning with students graduating from high school in the school year 2002-2003, graduation requirements specified in subsection (1) of this section are superseded by requirements specified in this subsection. Units of credit required for high school graduation with a Standard Diploma (effective 2002-2003 and thereafter) are:

- (A) Language Arts: 4 units or sets of competencies, to consist of 1 unit or set of competencies of grammar and composition, and 3 units or sets of competencies which may include, but are not limited to, the following courses: American Literature, English Literature, World Literature, Advanced English

Courses, or other English courses with content and/or rigor equal to or above grammar and composition;

(B) Mathematics: 3 units or sets of competencies, to consist of 1 unit or set of competencies of Algebra I or Algebra I taught in a contextual methodology, and 2 units or sets of competencies which may include, but are not limited to, the following courses: Algebra II, Geometry or Geometry taught in a contextual methodology, Trigonometry, Math Analysis or Precalculus, Calculus, Statistics and/or Probability, Computer Science, or other mathematics courses with content and/or rigor equal to or above Algebra I. Provided credit may be granted for Applied Mathematics I and II and Computer Science whether taught at the comprehensive high school or at a career and technology center;

(C) Science: 3 units or sets of competencies, to consist of 1 unit or set of competencies of Biology I or Biology I taught in a contextual methodology, and 2 units or sets of competencies in the areas of life, physical, or earth science or technology which may include, but are not limited to, the following courses: Chemistry I, Physics, Biology II, Chemistry II, Physical Science, Earth Science, Botany, Zoology, Physiology, Astronomy, Applied Physics, Principles of Technology, qualified agricultural education courses, or other science courses with content and/or rigor equal to or above Biology I. Provided, credit may be granted for Applied Biology/Chemistry, Physics, and Principles of Technology whether taught at the comprehensive high school or at a career and technology center;

(D) Social Studies: 3 units or sets of competencies, to consist of 1 unit or set of competencies of United States History, 1/2 to 1 unit or set of competencies of United States Government, 1/2 unit or set of competencies of Oklahoma History, and 1/2 to 1 unit or set of competencies which may include, but are not limited to, the following courses: World History, Geography, Economics, Anthropology, or other social studies courses with content and/or rigor equal to or above United States History, United States Government, and Oklahoma History; and

(E) Arts: 2 units or sets of competencies which may include, but are not limited to, courses in Visual Arts and General Music.

(F) Personal Financial Literacy Passport.

(i) Effective with the 2008-2009 school year and beginning with the seventh grade, students shall fulfill the requirements for a Personal Financial Literacy Passport in order to graduate from a public high school accredited by the State Board of Education with a standard diploma. The requirements for a Personal Financial Literacy Passport shall be the satisfactory completion and demonstration of satisfactory knowledge in all 14 areas of instruction during grades seven through twelve. The fourteen (14) areas of instruction are:

- (I) understanding interest, credit card debt, and online commerce;
 - (II) rights and responsibilities of renting or buying a home;
 - (III) savings and investing;
 - (IV) planning for retirement;
 - (V) bankruptcy;
 - (VI) banking and financial services;
 - (VII) balancing a checkbook;
 - (VIII) understanding loans and borrowing money, including predatory lending and payday loans;
 - (IX) understanding insurance;
 - (X) identity fraud and theft;
 - (XI) charitable giving;
 - (XII) understanding the financial impact and consequences of gambling;
 - (XIII) earning an income; and
 - (XIV) understanding state and federal taxes.
- (ii) Instruction in these fourteen areas must align and meet the Personal Financial Literacy PRIORITY ACADEMIC STUDENT SKILLS (PASS) as adopted by the Oklahoma State Board of Education.
- (iii) School districts shall have the option of determining when each of the 14 areas of instruction listed above shall be presented to students in Grades 7-12. Options include integration into one or more existing courses of study, a separate Personal Financial Literacy course, and/or use of State Department of Education PERSONAL FINANCIAL LITERACY online modules of learning. The Oklahoma State Department of Education online modules of learning and the assessments shall be available to all students as determined by the local school district.
- (iv) In order to facilitate the monitoring of student progress towards achieving the Personal Financial Literacy Passport, districts shall maintain a Personal Financial Literacy Passport cumulative record. The Personal Financial Literacy Passport cumulative record shall be a uniform document used by all school districts within the state. The State Department of Education shall provide an electronic version of the Personal Financial Literacy Passport cumulative record to the districts. Completion of the 14 areas of instruction of Personal Financial Literacy shall be documented on the student's high school transcript. The Personal Financial Literacy Passport cumulative record shall accompany the student when transferring to a new district.
- (v) Dependent districts, PK-8, may enter into a vertical articulated curriculum agreement with an independent district, PK-12, for facilitating and sharing of the personal financial literacy curriculum and instruction.
- (vi) Teachers providing instruction in personal financial literacy shall be ~~secondary~~-certified. 70 O.S. § 11-103.6h
- (G) Total minimum Core Curriculum: 15 units or sets of competencies
- (H) Total minimum Elective courses: 8 units or sets of competencies
- (I) Total minimum graduation requirements: 23 units or sets of competencies
- (3) No student shall receive credit for high school graduation more than once for completion of the same unit or set of competencies to satisfy the core curriculum requirements.
- (4) "Qualified agricultural courses" means courses that have been determined by the State Board of Education to offer the sets of competencies in the Priority Academic Student Skills (PASS) for one or more science content areas and which correspond to academic science courses. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.
- (5) A "unit" means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.
- (6) As a condition of receiving accreditation from the State Board of Education, students in grades nine through twelve shall enroll in a minimum of six periods, or the equivalent in block scheduling, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes.
- (7) Each high school's academic program shall be designed to prepare all students for employment and/or postsecondary education. The secondary academic program shall be designed to provide the teaching and learning of the skills and knowledge in the Priority Academic Student Skills. Beginning with 1999-2000 school year all high schools accredited by the State Department of Education shall offer the core curriculum required for the Standard Diploma during a student's high school career. To meet graduation requirements, local options may include courses taken by advanced placement, concurrent enrollment, correspondence courses or courses bearing different titles.
- (8) The secondary academic programs may also provide the traditional units of credit to be offered in Grades 9-12 with each secondary school offering and teaching at least 38 units or their equivalent each school year. Four (4) of these units may be offered on a two-year alternating plan with 34 units or their equivalent to be taught in the current school year. In schools with other than a four-year organization, these units shall be offered and taught in conjunction with the affiliated schools containing those grade levels. Career and technology center courses in which secondary students are enrolled may count toward the 38 required units of credit or their equivalent.

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(9) District boards of education can make exceptions to state high school graduation requirements for students who move to this state from another state after their junior year of high school.

(A) After a student from another state enrolls in an accredited Oklahoma high school the school board can make an exception to the high school graduation requirements of Section 11-103.6 of Title 70 of the Oklahoma Statutes. Individual exceptions can only be made when there are differing graduation requirements between the two states and completing Oklahoma graduation requirements will extend the student's date of graduation beyond the graduation date for the student's class.

(B) The district must report all exceptions made to state graduation requirements for these senior students to the State Department of Education each school year. All exceptions made at each district high school will be forwarded to the State Department of Education on or before July 1 of each year. Districts may report the information on the Annual Statistical Report. This reporting provision does not include students who have individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA) and who satisfy graduation requirements through the individualized education program.

(10) In order for a course offered by a supplemental educational organization to be counted for purposes of student academic credit and towards graduation requirements the local board of education must verify that the course meets all requirements in 70 O.S. § 11-103.6.

(11) Upon verification the local school board of education's request for course approval shall be submitted to the State Board of Education for final approval.

[OAR Docket #08-1234; filed 8-22-08]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #08-1230]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Financial Eligibility Criteria

Part 1. Resources

340:50-7-2 through 340:50-7-3 [AMENDED]

(Reference APA WF 08-07)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 4104 of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234).

DATES:

Adoption:

July 22, 2008

Approved by Governor:

August 11, 2008

Effective:

October 1, 2008.

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as the Oklahoma Department of Human Services (OKDHS) finds compelling public interest to amend resource rules regarding education and retirement accounts to comply with federal legislation effective October 1, 2008.

ANALYSIS:

The proposed revision to exempt retirement accounts and education accounts described in federal law from consideration as a resource is completed to comply with Section 4104 of the Food, Conservation, and Energy Act of 2008 (Public Law (P.L.) 110-234) that goes into effect October 1, 2008 and to provide staff with clear and concise rules to facilitate the accurate delivery of benefits and services to persons who are in need, which includes updating terminology.

340:50-7-2 is amended to: (1) remove language that Individual Retirement Accounts (IRAs) and some Keogh Plans are countable resources; and (2) add language that retirement plans and education accounts described in federal law are exempt as a resource.

340:50-7-3 is amended to remove language that IRAs and Keogh plans are countable resources.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2008:

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 1. RESOURCES

340:50-7-2. Excluded resources

In households applying for or receiving food benefits, resources listed in this Section are excluded for household members, for disqualified members whose resources are counted, or for ineligible aliens who would otherwise be a household member. When an exclusion applies because of use by or for a household member, the exclusion also applies when the resource is used by or for a disqualified person whose resources are counted or for an ineligible alien who would otherwise be a household member.

(1) **Home and surrounding property.** The home and surrounding property which is not separated from the home by intervening property owned by others is exempt. Public right-of-way, such as roads which run through the surrounding property and separate it from the home, does not affect exemption of the property.

(A) The home and surrounding property remain exempt when temporarily unoccupied by reasons of employment, training for future employment, illness, vacation, or uninhabitability caused by casualty or natural disaster so long as the household intends to return.

(B) Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) **Household personal goods, life insurance, and pension plans.** Household goods, personal belongings, including one burial lot per household member, the cash value of life insurance policies, and prepaid burial plans are exempt. The cash value of pension plans or funds described in federal law is excluded, ~~except for Individual Retirement Accounts (IRA) and Keogh Plans. A Keogh Plan may be excluded if it involves a contractual arrangement with individuals outside the household.~~

(3) **Vehicles.**

(A) Exclude one licensed vehicle per adult household member, ~~including an ineligible alien or disqualified household member whose resources are considered available to the household,~~ regardless of the use of the vehicle.

(B) Exclude any other licensed vehicle a household member under age 18, ~~including an ineligible alien or disqualified household member under age 18 whose resources are considered available to the household,~~ drives to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to and from employment.

(C) ~~Also exclude~~ Exclude any other licensed vehicle if:

- (i) used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles ~~that have previously been used by a self-employed household member engaged in farming but are no longer used in farming because the household member has terminated his or her self employment from farming~~ must continue to be excluded as a resource for one year from the date the household member terminated his or her self-employment farming;
- (ii) annually producing income consistent with its fair market value, even if used only on a seasonal basis;
- (iii) necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member, ~~ineligible alien, or disqualified person whose resources are considered available to the household,~~ such as the

vehicle of a traveling sales person or of a migrant farm worker following the work stream;

(iv) used as the household's home;

(v) necessary to transport a physically disabled household member, ~~physically disabled ineligible alien, or physically disabled disqualified person whose resources are considered available to the household,~~ regardless of the purpose of such transportation. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member. Only one vehicle per physically disabled household member may be excluded;

(vi) necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation unless the exclusion of the vehicle is questionable;

(vii) the value of the vehicle is inaccessible because its sale would produce an estimated return of not more than \$1,500;

(viii) jointly owned by a food benefit household member and someone who does not live with the food benefit household. To be excluded, the vehicle must not be used by, nor in the possession, of anyone who lives in or with the household. The food benefit household member must also be unable to sell the vehicle because the signature of the co-owner is needed and that person will not sign; or

(ix) legally prohibited from being sold by the food benefit household. The determination of whether a food benefit household can legally sell a vehicle is governed by the law of Oklahoma.

(BD) The exclusions in (i) through (iii) of this subsection continue to apply when the vehicle(s) is not in use because of temporary unemployment such as when a taxi driver is ill and cannot work or the vehicle is broken down and cannot be used.

(4) **Real or personal property directly related to the maintenance of excluded vehicles.** Property, real or personal, to the extent it is directly related to the maintenance or use of a vehicle described in paragraph (3) of this subsection is excluded. Only that portion of real property determined necessary for maintenance or use is excluded.

(5) **Income producing property.** Income producing property which annually produces income consistent with the fair market value is excluded even if used on a seasonal basis.

(6) **Property essential to employment.** Property, such as farm land or work related equipment including tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a

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household member is excluded. Property of a household member engaged in farming continues to be excluded for one year from the date the household member terminates his or her self-employment from farming.

(7) **Installment contracts.** Installment contracts for the sale of land or buildings are excluded if the contract or agreement is producing income consistent with its fair market value. The exclusion applies to the value of the property sold under the installment contract or held as security in exchange for a purchase price consistent with the fair market value of that property.

(8) **Inaccessible resources.** Resources whose cash value is not accessible to the household are exempt, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. If questionable, the worker establishes that the property is for sale and that the household will accept a reasonable offer.

(A) A resource is considered inaccessible if its sale or other disposition is unlikely to produce funds amounting to one half or more of the applicable resource limit for the household.

(B) The value of the inaccessible resource is the amount of the expected return to the household after subtracting estimated cost of sale or disposition, and consideration of the ownership interest to the household.

(C) A single resource may not be subdivided solely to obtain an exclusion as inaccessible.

(D) This inaccessible provision does not apply to vehicles or financial instruments such as stocks, bonds, or negotiable financial instruments.

(E) Any funds in a trust, or transferred to a trust, and the income produced by that trust, to the extent it is not available to the household, is considered inaccessible to the household if:

(A*i*) the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(B*ii*) the trustee administering the funds is either:

(I) a court; or

(II) an institution, corporation, or organization which is not under the direction or ownership of any household member; or

(III) an individual a person appointed by the court who has court imposed limitations placed on his or her use of the trust funds;

(C*iii*) trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(D*iv*) the funds held in irrevocable trust are either established from:

(I) the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust; or established from

(II) non-household funds by a non-household member.

(9) **Education assistance.** All education grants, work study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.

(10) **Resources excluded by law.** Resources currently excluded by law are:

(A) payments received:

(i) under the Alaska Native Claims Settlement Act [Public Law (P.L.) 92-203, § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(B) payments received by certain Indian tribal members under P.L. 94-114, Section 6 regarding submarginal land held in trust by the United States;

(C) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Exclude any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Exclude any per capita payments, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, as long as the payments meet the distribution requirements as stated in this subparagraph.

(i) Any interest or income derived from the funds after distribution is considered as any other income.

(ii) The per capita exclusion applies per person rather than per family.

(iii) When these excluded funds are deposited in a bank or other financial institution, the deposits are excluded as long as the funds are kept in a separate account and not commingled in an account with non-excluded funds.

(iv) When the excluded funds are commingled in an account with non-excluded funds, the excluded funds retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource.

(v) Purchases made with excluded funds are considered a resource;

(D) interests of individual Indians in trust or restricted lands;

(E) benefits received from Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) [P.L. 92-443, § 6];

(F) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 [P.L. 91-646, § 216];

(G) Earned Income Tax Credit (EITC) payments received by a participating food benefit household member as part of a federal tax refund or as advance payments received as part of a paycheck, excluded for 12 months during continuous participation. This does not mean that households lose the exclusion if they temporarily leave the program for administrative reasons;

(H) refunds of the state EITC as a result of filing a state income tax return in the month received and the following month;

(I) payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act of 1978 [P.L. 95-524];

(J) financial assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act in accordance with P.L. 99-498;

(K) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(L) payments received under the Civil Liberties Act of 1988. These payments are made to ~~individuals~~ persons of Japanese ancestry who were detained in internment camps during World War II;

(M) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(N) amounts held in an account for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(O) the resources of any non-household member unless the ~~individual~~ person is disqualified from the program by an administrative or court fraud hearing, by failing to obtain or refusing to provide a Social Security number, or is an ineligible alien who would otherwise be a household member;

(P) payments or allowances made under any federal law for the purpose of energy assistance such as the Low Income Home Energy Assistance Program (LIHEAP);

(Q) earmarked resources, such as those governmental payments made by the Individual and Family Grant Program or the Small Business Administration which are designated for the restoration of homes

damaged in a disaster and which are subject to a legal sanction if the funds are not used as intended. Resources such as those of self-employed persons, which have been prorated and counted as income, and Indian lands held jointly with the tribe or land that can be sold only with the approval of the Bureau of Indian Affairs are also exempt;

(R) the identified resources of all Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI) recipients when the household's total resources are calculated for food benefit eligibility purposes;

(S) excluded monies kept in a separate account, which are not commingled in an account with the non-excluded funds retain excluded status for an unlimited period of time.

(i) Monies of self-employed households that are excluded as a resource because they have been prorated over the period they are intended to cover and are commingled in an account with non-excluded funds retain their exclusion for the period of time over which they have been prorated as income.

(ii) All other excluded monies which are commingled in an account with other funds retain their exempt status for six months from the date they are commingled. When the household's total resources, including all funds in the commingled account, exceed the allowable limit after that time, all funds in the commingled account are considered as a resource;

(T) payments made to ~~individuals~~ persons because of their status as victims of Nazi persecution;

(U) any funds deposited in an Individual Development Account (IDA) operated under the Assets for Independence Act;

(V) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain ~~individuals~~ persons who are children of Vietnam War veterans; and

(W) Disaster Unemployment Assistance paid to ~~individuals~~ persons unemployed as the result of a major disaster.

(11) **Department of Housing and Urban Development (HUD) Family Self-sufficiency (FSS) Program escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded both as income and as a resource.

(12) Education accounts. Funds in education accounts established under Sections 529 and 530 of the Internal Revenue Code and Section 4000 of Title 56 of the Oklahoma State Statutes are excluded.

340:50-7-3. Non-exempt resources

(a) Non-exempt resources are those resources which, after deducting any encumbrances, must be considered in the determination of eligibility to receive food ~~stamp~~ benefits. ~~The~~

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worker must include sufficient detail in the case record to permit verification in the event that it becomes necessary because of inconsistent information or for a quality control review.

- (b) Non-exempt resources include, but are not limited to:
- (1) ~~Liquid liquid~~ resources. Liquid resources (must be verified), and include:
 - (A) ~~Cash cash~~ on hand;
 - (B) ~~Checking checking~~ or savings accounts;
 - (C) ~~Savings savings~~ certificates; or
 - (D) ~~Stoeks stocks~~ or bonds; or
 - (E) ~~IRA's or Keogh plans that do not involve the household member in a contractual relationship with individuals who are not household members. The value counted is the cash value of the account less any penalty assessed if the entire amount was withdrawn.~~
 - (2) ~~Non-liquid non-liquid~~ resources (verify. Non-liquid resources are verified if questionable), and include:
 - (A) ~~The value of these non-exempt resources, except for licensed vehicles, shall be the equity value. The equity value is the fair market value less encumbrances.~~
 - (iA) ~~Licensed licensed~~ and unlicensed vehicles;
 - (iiB) ~~Boats boats~~;
 - (iiiC) ~~Land land~~;
 - (ivD) ~~Recreational recreational~~ property;
 - (vE) ~~Mobile mobile~~ homes other than home property;
 - (viF) ~~Vacation vacation~~ home- property; or
 - (viiG) ~~Other other~~ property not specifically excluded.
- (c) The value of non-exempt resources, except for licensed vehicles, is the equity value. The equity value is the fair market value less encumbrances.
- (Bd) Exclude the entire value of non-liquid assets used as collateral for a business loan if the household is prohibited by the loan agreement from selling the asset.

[OAR Docket #08-1230; filed 8-19-08]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #08-1229]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Producers, Brokers and Limited Lines Producers
365:25-3-19. Medicare Part D volunteer counselors [NEW]

AUTHORITY:

Insurance Commissioner, 36 O.S. §§ 307.1 and 1435.5(B)(8)

DATES:

Adoption:

July 7, 2008

Approved by Governor:

August 8, 2008

Effective:

Immediately upon approval by the Governor

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A compelling public interest requires an emergency rule due to the necessity of providing by rule a means for compliance with amendments to Section 1435.5 passed during the 2008 session of the Oklahoma Legislature in Section 9 of House Bill 2122 which were effective on July 1, 2008.

ANALYSIS:

The purpose of this regulation is to set forth supporting documentation to be submitted to the Insurance Commissioner by volunteer counselors prior to conducting enrollment assistance to Medicare beneficiaries enrolling in Medicare Part D plans. Section 9 of House Bill 2122 provides that the supporting documents must be set out by rule.

CONTACT PERSON:

Karl F. Kramer, Oklahoma Insurance Department, (405) 521-2746

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

SUBCHAPTER 3. PRODUCERS, BROKERS AND LIMITED LINES PRODUCERS

365:25-3-19. Medicare Part D volunteer counselors

(a) To qualify for an exemption from the licensure requirements of the Oklahoma Producer Licensing Act of the Oklahoma Insurance Code pursuant to Section 1435.5(B)(8) of Title 36 of the Oklahoma statutes, partner organizations using volunteer counselors to assist Medicare beneficiaries with enrollment in Medicare Part D plans pursuant to the Federal Medicare Prescription Drug, Improvement and Modernization Act of 2008 shall file with the Insurance Commissioner the following supporting documentation prior to conducting enrollment assistance activity:

(1) The name, address and other pertinent contact information for the partner organization along with a list of persons acting as volunteer counselors who intend to assist in the enrollment of Medicare beneficiaries in Medicare Part D;

(2) A description of the training received by each volunteer counselor named in the list required by paragraph (1) of this subsection;

(3) A statement signed by each volunteer counselor named in the list required by paragraph (1) of this subsection stating:

(A) My name is [insert name of volunteer counselor] and my personal address is [insert personal address];

(B) I have received and read the Medicare Part D Prescription Drug Plan training materials provided by [insert partner organization name];

(C) I have not received and will not accept commissions or other valuable consideration from any person or plan for the enrollment assistance provided by me to Medicare beneficiaries;

(D) I will not disclose or use confidential information obtained as a result of my association with, or access to, any person with Medicare for any other purpose not directly required by CMS and the Oklahoma Insurance Department;

(E) I understand and acknowledge that the exemption from the licensure requirements of the Oklahoma Producer Licensing Act of the Oklahoma Insurance Code is strictly limited to my service as a volunteer counselor assisting in the enrollment of Medicare beneficiaries in Medicare Part D Prescription Drug Plans; and

(4) Any other information the Insurance Commissioner may request from a partner organization or volunteer counselor to assist in the verification of compliance with the requirements of Section 1435.5(B)(8) of Title 36 of the Oklahoma statutes.

(b) The Insurance Commissioner may order a volunteer counselor, after notice and opportunity for hearing, to cease the assistance of Medicare beneficiaries with enrollment in Medicare Part D plans for failure to comply with the requirements of Section 1435.5(B)(8) of Title 36 and this section. Issuance of this order shall not limit the Insurance Commissioner from taking other administrative action as authorized by the Oklahoma Insurance Code and the laws of this state.

[OAR Docket #08-1229; filed 8-19-08]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #08-1227]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 9. Oklahoma Voluntary Compliance Initiative [NEW]
710:1-9-1 through 710:1-9-10 [NEW]

AUTHORITY:

68 O.S. §§ 203, 216.3; Oklahoma Tax Commission

DATES:

Adoption:

July 8, 2008 (Commission Order No. 2008-7-08-04)

Approved by Governor:

August 8, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, 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 insure that the public has timely information regarding the Voluntary Compliance Initiative authorized by the 51st Legislature, 2nd Regular Session, and due to commence September 15, 2008.

ANALYSIS:

These rules set out definitions, delineate in detail the types of taxes, penalties and interest to which the Voluntary Compliance Initiative program will apply, describes the qualifications for waiver and the manner in which a taxpayer may take advantage of this program. Finally, the rules provide contact information and address some special circumstances which may arise.

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 9. OKLAHOMA VOLUNTARY COMPLIANCE INITIATIVE

710:1-9-1. General provisions

In order to encourage the voluntary disclosure and payment of taxes owed to the State, the Legislature has authorized the Oklahoma Tax Commission to establish a two-month period during which a full waiver of penalty, interest and any other collection fees due on eligible taxes shall be granted to any taxpayer who voluntarily files delinquent returns or reports and pays the taxes owed for any and all periods ending before January 1, 2008.

710:1-9-2. Definitions

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

"Voluntary Compliance Initiative" means a program providing for the waiver of interest, penalty, and any other collection fees associated with an eligible Oklahoma tax liability which was due and payable for any tax period ending before January 1, 2008.

"Voluntary compliance initiative period" means the period commencing at the start of the posted business day on September 15, 2008 and ending on November 14, 2008.

"Commission" means the Oklahoma Tax Commission.

710:1-9-3. Eligible tax liabilities to which Voluntary Compliance Initiative may apply

(a) All penalties and interest imposed upon the taxes and fees set out in this subsection are eligible for waiver pursuant to the Voluntary Compliance Initiative: [See: 68 O.S. § 216.3, generally]

(1) Mixed Beverage tax levied pursuant to Section 576 of Title 37 of the Oklahoma Statutes.

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(2) Gasoline and diesel tax levied pursuant to Section 500.4 of Title 68 of the Oklahoma Statutes;

(3) Gross Production and petroleum excise tax levied pursuant to Sections 1001, 1101 and 1102 of Title 68 of the Oklahoma Statutes;

(4) Franchise tax levied pursuant to Sections 1203 or 1204 of Title 68 of the Oklahoma Statutes;

(5) Sales tax levied pursuant to Sections 1354 of Title 68 of the Oklahoma Statutes;

(6) Use tax levied pursuant to Section 1402 of Title 68 of the Oklahoma Statutes;

(7) Income tax levied pursuant to Section 2355 of Title 68 of the Oklahoma Statutes;

(8) Withholding tax levied pursuant to 2385.2 of Title 68 of the Oklahoma Statutes; and

(9) Privilege tax, commonly known as the bank in lieu tax, levied pursuant to Section 2370 of Title 68 of the Oklahoma Statutes.

(b) Other penalties described in this subsection may also be waived pursuant to the Voluntary Compliance Initiative.

(1) Penalty for negligence or failure or refusal to file. [See: 68 O.S. § 217(E)]

(2) Penalty for fraud. [See: 68 O.S. § 217(F)]

(3) Penalty on the face of a tax warrant for failure to pay a delinquent tax. [See: 68 O.S. § 231.1]

(4) Penalty for filing a report or return with insufficient information. [See: 68 O.S. § 247]

(5) Any other penalty associated with a tax or fee levied or administered by the Commission pursuant to Titles 68 or 37 of the Oklahoma Statutes.

710:1-9-4. Qualification for Voluntary Compliance Initiative

(a) **Applicability.** Waiver of penalties and interest pursuant to the Voluntary Compliance Initiative shall apply only to tax liabilities which were due and payable for any tax period or periods ending before January 1, 2008.

(b) **Reports and returns.** The Commission shall waive the penalty, interest and other collection fees of any taxpayer who meets the statutory requirements and:

(1) Voluntarily files delinquent returns or reports and pays in full the taxes associated with the filing periods for which waiver is sought or enters into a written payment plan acceptable to the Tax Commission for the payment of the unpaid taxes in full in the manner and time established between the Tax Commission and the taxpayer;

(2) Voluntarily files amended tax returns or reports to correct an incorrect or insufficient original return or report, along with remittance of the taxes associated with the filing periods for which waiver is sought or enters into a written payment plan acceptable to the Tax Commission for the payment of the unpaid taxes in full in the manner and time established between the Tax Commission and the taxpayer; or

(3) Voluntarily pays in full or enters into a written payment plan acceptable to the Tax Commission for the payment of previously assessed tax liabilities in the manner

and time established between the Tax Commission and the taxpayer.

710:1-9-5. Application procedures

To obtain a waiver of penalty, interest and collection fees pursuant to the Voluntary Compliance Initiative, the applicant must follow the procedures set out in this subsection.

(1) **Time of payment.** A taxpayer must make a full payment of the taxes due or enter into a written payment plan between September 15, 2008, and not later than November 14, 2008, for each of the taxes and filing periods for which waiver is sought.

(2) **Form of payments.** Payments made by taxpayers under the Voluntary Compliance Initiative may be in the form of cash, a check, a money order, electronic funds transfer, or may be charged to an approved credit card. [See: <http://www.tax.ok.gov/payments.html>]

710:1-9-6. Verification and review

Any tax return or report filed under the Voluntary Compliance Initiative will remain subject to verification and review.

710:1-9-7. Disclosure

No return or document filed with the Commission pursuant to the Voluntary Compliance Initiative will be subject to disclosure, except as provided by 68 O. S. § 205.

710:1-9-8. Nonpayment penalty

(a) If any eligible tax is not paid before the end of the Voluntary Compliance Initiative or in conformity with a written payment plan entered into during the Voluntary Compliance Initiative, penalty equal to the amount of the original delinquent penalty imposed by the applicable section for nonpayment of the tax shall be added thereto.

(b) The Tax Commission shall not collect the penalty assessed in this Section if the individual or entity from which the tax liability is due was not eligible to participate in the compliance initiative.

(c) The Tax Commission shall not collect the penalty assessed in this Section if the taxpayer has timely filed a protest of an assessment pursuant to Section 221 of Title 68 of the Oklahoma Statutes or is otherwise engaged in a contested matter before a court of competent jurisdiction.

(d) The Commission shall not collect the penalty assessed in this Section if the taxpayer has a pre-existing payment plan with the Commission or one of its vendors and fulfills said payment plan.

710:1-9-9. Special circumstances

(a) **Pending protest.** Any taxpayer who has a protest pending with respect to an assessment made by the Commission is eligible for participation in the Voluntary Compliance Initiative if the taxpayer pays the taxes assessed in full and withdraws the protest.

(b) **Criminal prosecution.** The Commission will not grant a waiver to any taxpayer who is the subject of a State tax related criminal investigation or criminal prosecution.

(c) **Court costs, garnishments, warrant costs, warrant penalties.** Court costs, garnishments, warrant penalties and warrant costs are eligible for waiver under the Voluntary Compliance Initiative.

(d) **Application of payments.** A taxpayer request that payment under the Voluntary Compliance Initiative be applied to a particular tax liability or period can be honored to the extent that it is consistent with OAC 710 1-3-46, dealing with application of payments in general.

(e) **Court approval not required.** Because waiver of penalty and interest through the Voluntary Compliance Initiative is accomplished by operation of law, no Tax Commission Order will be issued, and no approval by a District Court will be necessary to make such waiver effective.

(f) **Bankruptcy.** Generally, a taxpayer who is currently in bankruptcy is not eligible for participation in the Voluntary Compliance Initiative.

710:1-9-10. Payment plan guidelines

(a) Individuals and businesses are eligible to enter into a payment plan if they are unable to pay the taxes in full during the voluntary compliance initiative period. The payment plan must be established between September 15, 2008 and November 14, 2008.

(b) If the payment plan is established between September 15th and September 30th, a minimum down payment of 20% must be made with the request. The first payment will be due on November 15, 2008 with at least 10% of the original base tax amount due monthly on the 15th of the month through June 15, 2009.

(c) If the payment plan is established between October 1st and October 31st, a minimum down payment of 30% must be made with the request. The first payment will be due on December 15, 2008 with at least 10% of the original base tax amount due monthly on the 15th of the month through June 15, 2009.

(d) If the payment plan is established between November 1st and November 14th, a minimum down payment of 40% must be made with the request. The first payment will be due on January 15, 2009 with at least 10% of the original base tax amount due monthly on the 15th of the month through June 15, 2009.

[OAR Docket #08-1227; filed 8-13-08]

**TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 30. HIGHWAY DESIGN**

[OAR Docket #08-1231]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Consulting Engineer Services
730:30-5-1 [AMENDED]

AUTHORITY:

Transportation Commission; 69 O.S. §§ 303, 304, 708.2 and 4002; 2008 O.S.L. §116

DATES:

Adoption:

July 14, 2008

Approved by Governor:

August 11, 2008

Effective:

Immediately upon Governor's approval or August 22, 2008 whichever is later.

Expiration:

Effective through July 14, 2009 unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Department of Transportation believes that a compelling public interest exists that necessitates the promulgation of this emergency rule as directed by Senate Bill 1181 which will be effective on August 22, 2008. The existing rules regarding consulting engineer services do not adequately address the provisions of 2008 O.S.L. § 116 (SB 1181) and would restrict the Department's ability to deliver the eight year construction work plan if not amended prior to the effective date.

ANALYSIS:

The purpose of the proposed emergency rulemaking action is to address the related provisions of SB1181 in order to continue with the effective and efficient procurement and utilization of consulting services in support of the Department's mission. The existing rules do not support the business practices of both the public and the private sector and are not suitable to address the statutory modifications. This emergency rulemaking action is critical in order to modernize the Department's business practices, bring related policy into step with the statute and to insure continuity of operations.

CONTACT PERSON:

Mary C. Brewington (405) 522-6002

PURSUANT TO THE ACTION 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. CONSULTING ENGINEER SERVICES

730:30-5-1. Department consultant contracts

(a) **Engineering capability.** ~~The Department will maintain sufficient engineering capability to perform the usual planning and engineering required to carry out the State highway construction program. The Department will also maintain sufficient cost accounting records to determine the costs of engineering services, both within the Department and by contract. It shall be the aim of this policy to use consulting services for highway engineering or planning services and for county emergency projects, only where such use is economically justifiable and has approval of the Director and the Transportation Commission.~~

(b) **Consultants.** ~~The use of engineering consultants shall be justified if this use will prevent a temporary build up of Department personnel for short periods of time or when special services are required which are not available within the Department.~~

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- (1) **Conditions for consultants.** The use of consultants for functional or preliminary plans will be authorized only when the following conditions are met:
- (A) There is a demonstrated need for preliminary design information in order to prepare an environmental impact statement. In this case the engineer's service may be a part of the planning consultant contract, or
 - (B) There is a need for preliminary design information on projects which do not require environmental impact statements, where location approval has been previously granted by FHWA, or where the design information is needed to aid in protection of rights of way in planned transportation corridors.
- (2) **Conditions to be met.** The use of consultants for preparation of construction plans will be authorized only when the following conditions are met:
- (A) A project report and public hearing have been completed and location approval has been given by FHWA (if required).
 - (B) There is a documented need for outside engineering services. The documentation will be initiated by the requesting division and will show that either special engineering capability is required and is not available in the Department or that a detailed manpower analysis of Department engineering capability indicates clearly a lack of capacity to accomplish the work.
- (3) **Qualification for emergency service.** Engineering services for construction plans will be considered under the criteria in (1) and (2) of this Subsection only if the project is an emergency, on the official five year program or specifically authorized by the Transportation Commission. Engineering services for construction plans on emergency county projects will be considered if recommended by the appropriate County Commissioners.
- (e) **Prerequisites for consultants.**
- (1) Each consulting firm which desires to perform engineering or planning services for the Department must be prequalified with the Department of Central Services.
 - (2) A selection Committee of at least five members shall be appointed by the Director from Department staff personnel to review the qualifications of applicants and to make written recommendations on the selection of consultants for specific work which has been approved by the Director and Commission for contracting for consulting engineering or planning services. The Director may also appoint additional members from other interested agencies or groups. The determination that a consultant is qualified for a given area in highway design or planning shall be based on the professional standing of principals and staff, experience and training in the specific area of work, past performance, and staff capacity.
 - (3) Firms on the Department of Central Services certified prequalification list shall be considered by the Committee using procedures set forth in Oklahoma State Statutes, Title 61, Sections 61 et. seq. Each firm's capability to perform the required work will be evaluated on the basis of the consultant interview, specified experience in the type of work contemplated, capacity of the consultant to accomplish the work in the required time, and past performance from previous contracts. Preference shall be given to firms whose principal place of business is located within the State of Oklahoma.
 - (4) Documentation of the selection procedures and the recommended order of preference for negotiations with particular firms shall be submitted in writing by the Selection Committee to the Director for approval and submission to the office of the Governor for his independent review of the entire selection process. In the event of an emergency county project, selection of a consulting engineer may be based on the recommendation of the appropriate county commissioners with the approval of the Oklahoma Transportation Commission.
 - (5) The Oklahoma Transportation Commission must approve each obligation of funds for engineering and planning work prior to contract execution.
- (a) The Oklahoma Department of Transportation may utilize consultant contracts to assist in the delivery of the Department's eight year construction work plan and other transportation improvements. All requests for consultant services must be approved by the Chief Engineer or an appointed designee. The Department will contract for professional services when one or both of the following conditions exist:
- (1) The inability to complete the required work within the desired time frame with available resources.
 - (2) The work requires specialized experience or expertise that is not available within the agency.
- (b) The Department will utilize two (2) basic forms of professional service contracts:
- (1) Project Specific Contracts. Contracts that provide for a general project location and specific definition of the anticipated services that will be required.
 - (2) Demand Service Contracts. Contracts that require a consultant to provide work and services on an as-needed or on-call basis. Demand service contracts that encompass all the preconstruction services necessary to provide a complete Plan, Specification and Estimate (PS&E) submission shall not exceed a total of five hundred thousand dollars (\$500,000) per consultant, per state fiscal year.
- (c) The Department will solicit for project specific contracts on an as-needed basis and for demand service contracts on a periodic basis. The Department will maintain a list of all consulting firms that submit a consultant information form. The Department will solicit for professional services from the list and will utilize the technological means available to notify interested consultants in a manner that will maximize their opportunity to respond. For unusual or specialized services, the Department may deviate from the list of consulting firms and solicit in a manner that will provide notice to the greatest number of consulting firms determined to be qualified and capable of providing the services required.
- (d) A consultant selection committee composed of representatives with knowledge and expertise in critical aspects of the

projects and services will be utilized for the consultant selection for professional service contracts.

[OAR Docket #08-1231; filed 8-19-08]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2008-32.

EXECUTIVE ORDER 2008-32

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. on Monday, August 25, 2008, until 5:00 p.m. on Tuesday, August 26, 2008, to honor Al Terrill an Oklahoma resident, who died on Wednesday, August 20, 2008, at age 71.

Senator Terrill was a dedicated public servant and a leader in the Oklahoma State Senate and his community. He served the state of Oklahoma as a public school teacher and then as a state senator for 18 years, including three years as the majority floor leader. Throughout his life, Senator Terrill made great contributions to the State of Oklahoma.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 22nd day of August, 2008.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #08-1240; filed 8-25-08]

1:2008-33.

EXECUTIVE ORDER 2008-33

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 1 and 2 of Article VI

of the Oklahoma Constitution and 63 O.S. §§ 683.1 *et seq.*, hereby declare that because of the state of emergency existing in the State of Florida due to Tropical Storm Fay by Florida Executive Order 08-170 declared by Governor Charlie Crist occurring statewide, it is necessary to assist and expedite all efforts of storm relief. In order to accommodate this need and to provide assistance to the citizens of Florida in this extraordinary situation I hereby order temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of overweight/oversized vehicles under Title 47;
2. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission;
3. The requirements for licensing/registration as required by the Oklahoma Tax Commission; and,
4. This Executive Order shall expire at the end of thirty (30) days after the filing of this Executive Order.

This executive order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission and the Commissioner of Public Safety, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 22nd day of August, 2008.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #08-1241; filed 8-25-08]

