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Board of Regents of ROGERS State College (<i>exempted 11-1-98</i>)	615	Department of WILDLIFE Conservation	800
Board of Regents of ROSE State College (<i>exempted 11-1-98</i>)	620	WILL Rogers and J.M. Davis Memorials Commission	805

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 532. COMMERCIAL PET BREEDERS ACT **CHAPTER 1. ORGANIZATION, OPERATION AND PURPOSES**

[OAR Docket #10-1216]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 1. Organization, Operation and Purposes [NEW]

SUMMARY:

The proposed rules are necessary to implement the Commercial Pet Breeders Act, and they describe the organization and administrative operations of the Board.

AUTHORITY:

59 O.S. Supp.2010, SEC. 5001 et seq.; Commercial Pet Breeders Act

COMMENT PERIOD:

Written comments will be accepted November 1, 2010 through December 1, 2010 at: Oklahoma Board of Commercial Pet Breeders, 3126 So Boulevard, Box 237 Edmond, OK 73013, Attn: Will Brogden. Persons wishing to present their views in writing may do so before 5:00pm on December 1, 2010.

PUBLIC HEARING:

Public Hearing is scheduled on December 9, 2010, 4:00p.m.at 201 N.E. 38th Terr, Suite 1, Oklahoma City, Oklahoma 73105. Telephone 405-524-9006. Anyone who wishes to speak must sign in at the door by 3:45pm and a time limit for comments may apply.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Will Brogden at the above address during the period from November 1, 2010, through December 1, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Board of Commercial Pet Breeders, 3126 So. Boulevard, Box 237 Edmond, OK 73013. Telephone 405-524-9006. The Rules will be available on www.okvetboard.com.

RULE IMPACT STATEMENT:

The rule impact statement which includes a brief summary of the rules, the proposed actions being taken, the circumstances which created the need for the rules, and the intended effect of the rules may be obtained from the Oklahoma Board of Commercial Pet Breeders, 3126 So. Boulevard, Box 237 Edmond, OK. 73013 Telephone 405-524-9006. The Impact Statement will be available on www.okvetboard.com.

CONTACT PERSON:

Will Brogden (405) 524-9006

[OAR Docket #10-1216; filed 10-7-10]

TITLE 532. COMMERCIAL PET BREEDERS ACT **CHAPTER 10. LICENSING AND SUPERVISION**

[OAR Docket #10-1217]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

Subchapter 2. Licensing [NEW]

Subchapter 3. Violations, Complaints, Investigations and Enforcement [NEW]

SUMMARY:

The proposed rules are necessary to implement the Commercial Pet Breeders Act, and they set forth the procedures and standards the Board will follow in licensing commercial pet breeders, conducting investigations and the enforcing of the Act.

AUTHORITY:

59 O.S. Supp.2010, SEC. 5001 et seq.; Commercial Pet Breeders Act

COMMENT PERIOD:

Written comments will be accepted November 1, 2010 through December 1, 2010 at: Oklahoma Board of Commercial Pet Breeders, 3126 So Boulevard, Box 237 Edmond, OK 73013, Attn: Will Brogden. Persons wishing to present their views in writing may do so before 5:00pm on December 1, 2010.

PUBLIC HEARING:

Public Hearing is scheduled on December 9, 2010, 4:00p.m.at 201 N.E. 38th Terr, Suite 1, Oklahoma City, Oklahoma 73105. Telephone 405-524-9006. Anyone who

Notices of Rulemaking Intent

wishes to speak must sign in at the door by 3:45pm and a time limit for comments may apply.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Will Brogden at the above address during the period from November 1, 2010, through December 1, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Board of Commercial Pet Breeders, 3126 So. Boulevard, Box 237 Edmond, OK 73013. Telephone 405-524-9006. The Rules will be available on www.okvetboard.com.

RULE IMPACT STATEMENT:

The rule impact statement which includes a brief summary of the rules, the proposed actions being taken, the circumstances which created the need for the rules, and the intended effect of the rules may be obtained from the Oklahoma Board of Commercial Pet Breeders, 3126 So. Boulevard, Box 237 Edmond, OK. 73013 Telephone 405-524-9006. The Impact Statement will be available on www.okvetboard.com.

CONTACT PERSON:

Will Brogden (405) 524-9006

[OAR Docket #10-1217; filed 10-7-10]

TITLE 532. COMMERCIAL PET BREEDERS ACT **CHAPTER 15. OPERATIONS GUIDELINES**

[OAR Docket #10-1218]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

Subchapter 2. Minimum Housing and Care Standards [NEW]

Subchapter 3. Minimum Transportation and Sales Standards [NEW]

Subchapter 4. Recordkeeping and Sales Requirements [NEW]

SUMMARY:

The proposed rules are necessary to interpret and implement the Commercial Pet Breeders Act, and they set forth the

minimum standards that commercial pet breeders must adhere to in the conduct of commercial pet breeding activities, including housing and care standards, and transportation, sales and recordkeeping requirements.

AUTHORITY:

59 O.S. Supp.2010, SEC. 5001 et seq.; Commercial Pet Breeders Act

COMMENT PERIOD:

Written comments will be accepted November 1, 2010 through December 1, 2010 at: Oklahoma Board of Commercial Pet Breeders, 3126 So Boulevard, Box 237 Edmond, OK 73013, Attn: Will Brogden. Persons wishing to present their views in writing may do so before 5:00pm on December 1, 2010.

PUBLIC HEARING:

Public Hearing is scheduled on December 9, 2010, 4:00p.m.at 201 N.E. 38th Terr, Suite 1, Oklahoma City, Oklahoma 73105. Telephone 405-524-9006. Anyone who wishes to speak must sign in at the door by 3:45pm and a time limit for comments may apply.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Will Brogden at the above address during the period from November 1, 2010, through December 1, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Board of Commercial Pet Breeders, 3126 So. Boulevard, Box 237 Edmond, OK 73013. Telephone 405-524-9006. The Rules will be available on www.okvetboard.com.

RULE IMPACT STATEMENT:

The rule impact statement which includes a brief summary of the rules, the proposed actions being taken, the circumstances which created the need for the rules, and the intended effect of the rules may be obtained from the Oklahoma Board of Commercial Pet Breeders, 3126 So. Boulevard, Box 237 Edmond, OK. 73013 Telephone 405-524-9006. The Impact Statement will be available on www.okvetboard.com.

CONTACT PERSON:

Will Brogden (405) 524-9006

[OAR Docket #10-1218; filed 10-7-10]

Cancelled Hearings/Comment Periods

If an agency cancels a hearing or comment period announced in a published Notice of Rulemaking Intent, the agency must submit a notice of such cancellation to the Office of Administrative Rules (OAR). The OAR publishes the cancellation notice in the next possible issue of the *Register*.

For additional information on cancelled hearings and comment periods, see OAC 655:10-7-27.

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 15. CONSUMER RIGHTS**

[OAR Docket #10-1214]

RULEMAKING ACTION:

Cancelled comment period and public hearing relating to a proposed PERMANENT rulemaking action.

PROPOSED RULES:

Chapter 15. Consumer Rights [AMENDED]

REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking Intent for this action was published at 28 Ok Reg 45.

CANCELLED COMMENT PERIOD:

October 2, 2010 to November 2, 2010.

CANCELLED PUBLIC HEARING:

2:00 p.m., November 4, 2010, Oklahoma Department of Mental Health and Substance Abuse Services, 1200 NE 13th Street, Oklahoma City, Oklahoma.

ADDITIONAL INFORMATION:

Another comment period and public hearing will be announced at a later date. For additional information, contact Stephanie Kennedy, Administrative Rules Liaison, at (405) 522-3871 or skennedy@odmhsas.org.

[OAR Docket #10-1214; filed 10-4-10]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 53. STANDARDS AND CRITERIA
FOR CERTIFIED PEER RECOVERY
SUPPORT SPECIALISTS**

[OAR Docket #10-1209]

RULEMAKING ACTION:

Cancelled comment period and public hearing relating to a proposed PERMANENT rulemaking action.

PROPOSED RULES:

Chapter 53. Standards and Criteria for Certified Peer Recovery Support Specialists [NEW]

REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking Intent for this action was published at 28 Ok Reg 46.

CANCELLED COMMENT PERIOD:

October 2, 2010 to November 2, 2010.

CANCELLED PUBLIC HEARING:

3:00 p.m., November 4, 2010, Oklahoma Department of Mental Health and Substance Abuse Services, 1200 NE 13th Street, Oklahoma City, Oklahoma.

ADDITIONAL INFORMATION:

Another comment period and public hearing will be announced at a later date. For additional information, contact Stephanie Kennedy, Administrative Rules Liaison, at (405) 522-3871 or skennedy@odmhsas.org.

[OAR Docket #10-1209; filed 9-29-10]

Submissions for Review

Within 10 calendar days after adoption by an agency of a proposed PERMANENT rulemaking action, the agency must submit the proposed rules to the Governor and the Legislature for review. In addition, the agency must publish in the *Register* a "statement" that the rules have been submitted for gubernatorial/legislative review.

For additional information on submissions for gubernatorial/legislative review, see 75 O.S., Section 303.1, 303.2, and 308.

**TITLE 435. STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
CHAPTER 20. PHYSICAL THERAPISTS
AND ASSISTANTS**

[OAR Docket #10-1208]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 9. Continuing Education

435:20-9-3. Continuing education categories

SUBMITTED TO GOVERNOR:

September 24, 2010

SUBMITTED TO HOUSE:

September 24, 2010

SUBMITTED TO SENATE:

September 24, 2010

[OAR Docket #10-1208; filed 9-28-10]

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 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 30. AIRCRAFT PILOT AND PASSENGER PROTECTION ACT

[OAR Docket #10-1212]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions [NEW]

25:30-1-1 [NEW]

25:30-1-2 [NEW]

25:30-1-3 [NEW]

25:30-1-4 [NEW]

25:30-1-5 [NEW]

Subchapter 3. Application Requirements [NEW]

25:30-3-1 [NEW]

25:30-3-2 [NEW]

25:30-3-3 [NEW]

25:30-3-4 [NEW]

Subchapter 5. Obstruction Standards [NEW]

25:30-5-1 [NEW]

25:30-5-2 [NEW]

Subchapter 7. Notice, Determination and Commission Actions [NEW]

25:30-7-1 [NEW]

25:30-7-2 [NEW]

25:30-7-3 [NEW]

25:30-7-4 [NEW]

25:30-7-5 [NEW]

25:30-7-6 [NEW]

Subchapter 9. Permits [NEW]

25:30-9-1 [NEW]

25:30-9-2 [NEW]

25:30-9-3 [NEW]

Subchapter 11. Miscellaneous Provisions [NEW]

25:30-11-1 [NEW]

Appendix A. Survey Type Adjustment [NEW]

AUTHORITY:

Oklahoma Aeronautics Commission, 3 O.S. Section 120.1.

DATES:

Adoption:

August 12, 2010

Approved by Governor:

September 17, 2010

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature

FINDING OF EMERGENCY:

HB 2919, the Aircraft Pilot and Passenger Protection Act, was passed by the Legislature this past session and signed into law by Governor Henry. The bill goes into effect as of October 1, 2010. Emergency rules are needed to

state guidelines for the permitting process noted in the bill and to ensure those guidelines will be in place as soon as the bill becomes law on October 1, 2010.

ANALYSIS:

The emergency rules set the requirements and procedures to be followed by the Aeronautics Commission in the administration and enforcement of its duties regarding the construction of a structure in the vicinity of a public-use airport and notification to military airports in the state of Oklahoma.

CONTACT PERSON:

Treasure Tytenicz, Government Affairs Liaison and Aviation Education Coordinator, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

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

25:30-1-1. Purpose

The purpose of this chapter is to set administrative rules for the implementation of HB 2919 - the Aircraft Pilot and Passenger Protection Act. This chapter establishes the requirements and procedures to be followed by the Commission in the administration and enforcement of its duties under Title 3, Oklahoma Statutes, Section 120.1 for construction of structures in the vicinity of public-use airports.

25:30-1-2. Definitions

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

"Airport elevation" is the highest point of an airport's usable runways measured in feet from mean sea level;

"Airport reference point" is the geometrical center of all usable runways;

"Applicant" is an individual, firm, partnership, corporation, association, or body politic and includes a trustee, receiver, assignee, or other similarly authorized representative of any of them;

"Approach surface" is an imaginary surface shaped like a trapezoid;

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(A) longitudinally centered on the extended runway centerline at a public-use airport.

(B) beginning two hundred (200) feet beyond the end of each runway pavement and at the runway end elevation.

(C) having an inner-edge width of one thousand (1,000) feet expanding outward uniformly to a width of sixteen thousand (16,000) feet at the outer edge, and

(D) sloping upward for a distance of ten thousand (10,000) feet at a slope of fifty (50) to one (1), with an additional forty thousand (40,000) feet at a slope of forty (40) to one (1);

"Commission" means the Oklahoma Aeronautics Commission or a successor agency;

"Conical surface" is an imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four thousand (4,000) feet;

"FAA" means the Federal Aviation Administration or a successor agency;

"Horizontal surface" is an imaginary horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of ten thousand (10,000) feet radii from a point located on the extended runway centerline two hundred (200) feet beyond each end of runway pavement and connecting the adjacent arcs by lines tangent to those arcs;

"Incompatible purpose" means the use of a building or structure as a residence, educational center (including all types of primary and secondary schools, preschools, and child-care facilities), places of worship, hospital, medical inpatient treatment facility, nursing/convalescent home, retirement home, or similar use;

"Legal representative" means a person who is authorized to legally bind an entity;

"Permit" means a permit issued by the Commission under this act;

"Person" means an individual, firm, partnership, corporation, association, or body politic and includes a trustee, receiver, assignee, or other similarly authorized representative of any of them;

"Primary surface" is a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is one thousand (1,000) feet;

"Public-use airport" means a structure or an area of land or water that is designed and set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the interest of the public for the landing and taking off of aircraft and is identified by the FAA as a public-use airport. Public-use airport shall include any military airport operated by a branch

of the armed services of the United States government. Public-use airport shall not include any privately owned airport for private use as identified by the FAA, or any airport owned by a municipality with a population exceeding five hundred thousand (500,000) according to the most recent Federal Decennial Census;

"Runway" means the portion of an airport designated as the area used for the landing or takeoff of aircraft;

"Runway protection zone" is a trapezoidal zone centered along the extended runway centerline, beyond each end of the primary surface, two thousand five hundred (2,500) feet long, with an inner width of one thousand (1,000) feet and an outer width of one thousand seven hundred fifty (1,750) feet. The function of the runway protection zone is to enhance the protection of people and property on the ground;

"Structure" means any constructed or installed object, including, but not limited to, buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and antennae and overhead transmission lines. The term does not include:

(A) any aviation navigational aids that are fixed by function, or

(B) any construction or installed object on property owned by the federal government; and

"Total structure height" means the elevation of the ground above mean sea level at the structure's location, plus the height of the structure above ground level in feet, plus the applicable survey type adjustment.

25:30-1-3. Who is required to file

A person shall obtain a permit from the Commission prior to the construction or installation of any of the following near a public-use airport:

(1) Any proposed structure for an incompatible purpose in the primary surface or the runway protection zone;

(2) Any structure, alteration or addition to a structure within three (3) statute miles from the airport reference point of a public-use airport, that would result in a total structure height in excess of one hundred fifty (150) feet above the established airport elevation; and

(3) Any structure, alteration or addition to a structure that would result in a total structure height greater than the horizontal, conical or approach surfaces, as defined in 25:30-1-2 of the Aircraft Pilot and Passenger Protection Act.

25:30-1-4. Who is not required to file

A permit from the Commission shall not be required for the following:

(1) For mobile or temporary equipment used to construct or install a new structure or to perform routine maintenance, repairs, or replace parts of an existing structure; or

(2) To repair, replace, or alter an existing structure that would not result in a total structure height greater than the horizontal, conical or approach surfaces as defined in

Section 25:30-1-2, or change the location of an existing structure.

(3) Structures that exist or have an approved building permit from the local authority with jurisdiction over the property that the structure is proposed to be constructed upon, prior to October 1, 2010.

25:30-1-5. Violations

Each violation of the Aircraft Pilot and Passenger Protection Act, or rulings promulgated by the Commission pursuant to this act, shall constitute a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00). Each day that such a failure continues constitutes a separate violation. In addition, the Commission may institute in any court of general jurisdiction, an action to prevent, restrain, correct, or abate any violation of this act, or any rules adopted or orders issued by the Commission pursuant to this act. The court may grant such relief, by way of injunction, which may be mandatory, or otherwise, as may be necessary under this act and the applicable rules or orders of the Commission issued under this act.

SUBCHAPTER 3. APPLICATION REQUIREMENTS

25:30-3-1. Application form and time of notice

(a) **Form.** Each person that is required to file for a permit from the Commission in accordance with 25:30-1-3, shall send one original and one copy of OAC form A-1 to the Commission or on an electronic form approved by the Commission. Copies of the Form may be obtained free of charge from the Commission's Office or downloaded in electronic format from the Commission's website. The Commission will make available a web-based application for online permit application that is consistent with the requirements set forth in Title 62 of the Oklahoma Statutes.

(b) **Additional application requirements.** Applications to the Commission for a permit in accordance with the provisions of these rules shall include the following in addition to the requirements of 25:30-3-1(a):

(1) For construction in a primary surface or runway protection zone, in accordance with section 25:30-5-1:

(A) The following statement signed by a legal representative of the applicant: "The applicant acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this application is located in the primary surface or the runway protection zone of a public-use airport, and that the applicant is building a structure upon this real estate, with the full knowledge and acceptance that it may be incompatible with the normal airport operations including the landing and takeoff of aircraft."

(B) if notice is required to be filed with FAA, a copy of the FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as described in 14 CFR part 77, sub-part B, Section 17, to be submitted to the FAA.

(2) For construction or alteration of a structure in a horizontal, conical, or approach surface in accordance with section 25:30-5-2: a copy of FAA Form 7460-1, if required to be submitted to the FAA.

(c) **When to file for a permit.** If FAA Form 7460-1 is required to be filed for the proposed construction, then an application for a permit pursuant to Section 25:30-1-3 shall be filed at the same time the FAA Form 7460-1 is sent to the FAA, or at any time before that. If FAA Form 7460-1 is not required to be filed with the FAA, then the application shall be filed at least thirty (30) days before the earlier of the following:

(1) The date the proposed construction or alteration is to begin; or

(2) The date an application for a construction or building permit is to be filed with the municipality.

25:30-3-2. Acceptance of application and amendments

(a) **Complete applications.** The date of receipt of an application shall be the date the Commission determines an application is complete in all respects including application fee in accordance with 25:30-3-4, and this date termed as the "date of record" shall be noted in the records.

(b) **Incomplete applications.** If the Commission determines the application is incomplete, the Commission shall advise the applicant and a period of sixty (60) days shall be allowed for the refiling of a complete application. If the Commission determines that a completed application was not submitted within the time allowed, the Commission will consider the application withdrawn, unless the Commission agrees to give the applicant more time.

(c) **Application amendments.** Applications shall be amended or revised by the applicant or his legal representative. Amendments to the application will be classified as either minor or major, depending upon the nature of the amendment requested.

(1) **Minor amendments** are administrative in nature and do not amend the location or total height of the proposed structure. Also, a minor amendment will not amend the "date of record" of the application.

(2) **Major amendments** are defined as those that affect the location and/or the total structure height. The "date of record" for a completed application will be revised once the amendment has been accepted by the Commission.

25:30-3-3. Applications filed later than provided in section 25:30-3-1 subsection (c).

Applications not filed in accordance with the provisions of section 25:30-3-1(c), or filed after construction has begun, will be assessed penalties or be subject to action in accordance with 25:30-1-5.

25:30-3-4. Fees

Pursuant to Title 3, Oklahoma Statutes, Section 120.1 for construction of structures in the vicinity of public-use airports, the Commission shall charge reasonable fees for services rendered, not to exceed Two Hundred Dollars (\$200.00). All fees

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shall be paid to the Oklahoma Aeronautics Commission. Required fees must be paid before any action will be taken by the Commission on the matter relating thereto and before the issuance of any permit. Permit fees will not be refunded if the application for a permit is denied or withdrawn. The following fees will be charged:

- (1) Application for a new permit: \$200.00
- (2) Minor amendment to application: \$50.00
- (3) Major amendment to application: \$100.00
- (4) Amendments to an existing permit: \$100.00

SUBCHAPTER 5. OBSTRUCTION STANDARDS

25:30-5-1. Incompatible structures

The construction of a structure for an incompatible purpose within the primary surface or the runway protection zone is presumed to be incompatible with normal airport operations including the landing and takeoff of aircraft.

25:30-5-2. Tall structures

Any structure or alteration to a structure is presumed to be a hazard to air navigation if its total structure height is greater than the horizontal, conical or approach surfaces, as defined in Section 25:30-1-2 of the Aircraft Pilot and Passenger Protection Act.

SUBCHAPTER 7. NOTICE, DETERMINATION AND COMMISSION ACTIONS

25:30-7-1. Commission review

(a) Upon receiving an application, the Commission shall notify a legal representative of the public-use airport owner affected by the application and solicit comments from the airport owner.

(b) In determining whether to issue a permit, the Commission shall consider sections 25:30-5-1 and 25:30-5-2, and the following:

- (1) The nature of the terrain and height of existing structures;
- (2) Public and private interests and investments;
- (3) The character of flying operations and planned developments of an airport;
- (4) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport;
- (5) Technological advances;
- (6) The safety of persons on the ground and in the air;
- (7) Land use density;
- (8) Comments from all interested persons;
- (9) Findings and determinations of other government agencies;
- (10) Depending upon the type of survey used, an adjustment will be made to the horizontal and vertical measurements of the proposed structure as described in Appendix

A of this Chapter. If the survey type (horizontal and vertical) is not certified by a licensed engineer or a licensed surveyor, a horizontal adjustment of plus or minus two hundred fifty (250) feet and a vertical adjustment of fifty (50) feet will be applied to the structure measurements;

(11) Any other information the Commission finds pertinent to that applications review.

25:30-7-2. Review time period

The review time period for an application will commence once a complete application has been accepted in accordance with section 25:30-3-2.

(1) If FAA Form 7460-1 is also required to be filed with FAA, then the Commission shall notify the applicant of its determination within thirty (30) days of the FAA completing its aeronautical study. If the applicant has not been notified by the Commission of its determination within thirty (30) days of the FAA completing its aeronautical study, then the applicant shall notify the Commission that it has not received notice of the Commission's determination. The Commission shall then have seven (7) working days from the date of the applicant's notice to notify the applicant of its determination. Nothing herein precludes the Commission from making its determination before the FAA completes its aeronautical study.

(2) If FAA Form 7460-1 is not required, then the Commission shall notify the applicant of its determination within sixty (60) days of date of record. If the applicant has not been notified by the Commission of its determination within sixty (60) days of date of record, then the applicant shall notify the Commission that it has not received notice of the Commission's determination. The Commission shall then have seven (7) working days from the date of the applicant's notice to notify the applicant of its determination.

25:30-7-3. Commission's determination

The Commission's review of an application can lead to the following determinations:

(1) The proposed construction would not exceed any standard as set forth in sections 25:30-5-1 or 25:30-5-2 and is therefore approved;

(2) The proposed construction would exceed the obstruction standards set forth in sections 25:30-5-1 or 25:30-5-2 and is therefore denied;

(3) The proposed construction would exceed the obstruction standards set forth in sections 25:30-5-1 or 25:30-5-2; however, due to other considerations listed in section 25:30-7-1, the application is approved; and

(4) The proposed construction is not located in an area that is regulated in accordance with 25:30-1-3; therefore, a permit from the Commission is not required.

25:30-7-4. Actions required for approved applications

Upon the determination of the Commission to approve an application, an original permit shall be forwarded to the applicant. The applicant shall complete the following steps:

- (1) The applicant for a permit under Section 25:30-1-3 shall record each permit issued by the Commission in the office of the county clerk for the county where the structure is located not later than thirty (30) business days after the Commission issues the permit. If a structure is located in more than one county, the county that contains the majority of the structure is the county in which the permit must be filed. A permit issued under Section 25:30-1-3 (1) shall contain the following statement: "The permittee acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this permit is located within the primary surface or the runway protection zone of a public-use airport, and that the permittee is building a structure upon this real estate with the full knowledge and acceptance that it may be incompatible with normal airport operations including the landing and takeoff of aircraft.";
- (2) Every permit issued by the Commission shall specify that obstruction markers, markings, lighting, or other visual or aural identification required to be installed on or in the vicinity of the structure shall conform to federal laws and regulations; and
- (3) A permit issued in accordance with the provisions of Section 25:30-7-3 is valid only after the Commission receives a certified copy of the recorded permit with the recording data from the county clerk of the county in which the structure is located.

25:30-7-5. Denial of permit

- (a) **Denial of permit and notification.** If the Commission determines that a permit should not be issued under the provisions of these rules, the Commission shall notify the applicant in writing of its determination by sending it through certified or registered mail to the applicant at the address specified in the application.
- (b) **Final determination and/or reconsideration.** The determination is final thirty (30) days after notification of the determination is served, unless the applicant, within the thirty-day period, requests reconsideration in writing to the Commission and provides written evidence showing why the application should have been approved. The Commission has up to a period of thirty (30) days from the receipt of the request. The Commission shall notify the applicant of its determination as specified in subsection (a) of this section. In the event of a second denial by the Commission of the permit request, the applicant can request a hearing before the Commission with reference to the application. A hearing under this section shall be open to the public. The applicant may appear and be heard either in person or by counsel and may present pertinent evidence and testimony. At the hearing, the applicant has the burden to show cause why the Commission should have issued the permit to erect the proposed structure.

25:30-7-6. Construction of works.

A permit issued in accordance with the provisions of the Aircraft Pilot and Passenger Protection Act is valid only if the proposed structure has been constructed within ten (10) years of the issuance of a permit by the Commission pursuant to Section 25:30-7-4.

SUBCHAPTER 9. PERMITS

25:30-9-1. Contents of permits

- (a) Every permit issued by the Commission shall contain the following:
 - (1) The date the permit is issued.
 - (2) The county or counties in which the structure(s) is or are located.
 - (3) The permit number and date issued, which shall be the date the permit is approved by the Commission or where appropriate, by the Director.
 - (4) The name and address to whom issued.
 - (5) The purpose for which the structure will be used.
 - (6) Survey information of the site location and total height of the structure provided with the application.
 - (7) Any other items to be specified by the Commission.
- (b) In addition to the above, the permit shall contain any additional terms, conditions, limitations, or restrictions the Commission may prescribe.

25:30-9-2. Acceptance of permit by permittee

Acceptance of the permit shall be an acknowledgement and agreement that permittee will comply with all the terms, provisions, limitations, conditions and restrictions contained in the permit.

25:30-9-3. Amendments to permit

The Commission shall consider amendments to permits that are administrative in nature including the transfer of ownership rights. The permit holder or his legal representative shall notify the Commission in writing of the amendments to the permit and shall provide the affected permit number(s). Changes to the location or the total height of a permitted structure will require the applicant to obtain a new permit.

SUBCHAPTER 11. MISCELLANEOUS PROVISIONS

25:30-11-1. Military airspace

- (a) Any person required to notify the FAA of any proposed construction or alteration pursuant to Subpart B of Section 77.13 of the Federal Aviation Regulations Part 77, that in response receives an acknowledgement from the FAA that further aeronautical study is required to determine whether the proposed construction or alteration would be a hazard to air navigation, shall, upon requesting further aeronautical study by the FAA, concurrently notify the Commission of the request

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and shall provide the Commission with true and correct copies of all relevant filings made with the FAA.

(b) Upon receipt of such notification of the filing of a request for further aeronautical study, the Commission shall give timely notice thereof to the Oklahoma Strategic Military Planning Commission, or any successor agency, and to any military airport within Oklahoma potentially affected by the proposed construction or alteration.

(c) The Commission further shall use its best efforts to establish regular and consistent communication with the FAA to encourage sharing of information regarding construction or alteration in a military training route or slow-speed low-altitude training route within the state of Oklahoma with appropriate state agencies and military installations.

APPENDIX A. SURVEY TYPE ADJUSTMENT [NEW]

Survey Type	Horizontal Adjustment	Survey Type	Vertical Adjustment
1	+20 ft (6 m)	A	+3 ft (1 m)
2	+50 ft (15 m)	B	+10 ft (3 m)
3	+100 ft (30 m)	C	+20 ft (6 m)
4	+250 ft (75 m)	D	+50 ft (15 m)
5	+500 ft (150 m)	E	+125 ft (38 m)

[OAR Docket #10-1212; filed 9-30-10]

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

[OAR Docket #10-1219]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 7. Environmental Permit Process
Part 5. Land Protection Division Tiers and Time Lines
252:4-7-61 [REVOKED]
252:4-7-62 [REVOKED]
252:4-7-63 [REVOKED]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; the Hazardous Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.*

DATES:
Comment Period:
March 5 through April 16, 2010; July 15 through August 16, 2010.

Public Hearings:
April 22, 2010 Hazardous Waste Management & Advisory Council
August 24, 2010 Environmental Quality Board

Adoption:

August 24, 2010

Approved by Governor:

September 17, 2010

Effective:

Immediately upon Governor's approval

Expiration Date:

Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meetings originally scheduled for January 28, 2010, and then rescheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Additionally, the Environmental Quality Board cancelled its June 2010 meeting due to inclement weather. Because the proposed rules that were to be considered during the January-June 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ found it necessary to offer the proposed rules to the HWMAC as emergency rules in its April 2010 rulemaking hearing. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up

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hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances. The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule adoption.

ANALYSIS:

In 2009, the Oklahoma legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act to better streamline the Brownfields program. One of the amendments clarified that a Certificate of Completion and a Certificate of No Action Necessary were not "permits" as defined in 27A O.S. § 2-14-103. Therefore, it is no longer necessary for the Brownfields program to conform to the permitting tier hierarchy.

This rule revocation process is progressing in tandem with the rulemaking for the new Chapter 221 which includes rules for public involvement in the Brownfields process.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

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., § 253(D):

252:4-7-61. Brownfields applications - Tier I [REVOKED]

~~A Tier I application shall be required for a Memorandum of Agreement for site characterization.~~

252:4-7-62. Brownfields applications - Tier II [REVOKED]

~~A Tier II application shall be required for all Certificates.~~

252:4-7-63. Brownfields applications - Tier III [REVOKED]

~~None.~~

[OAR Docket #10-1219; filed 10-8-10]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 220. BROWNFIELDS [REVOKED]**

[OAR Docket #10-1220]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Chapter 220. Brownfields [REVOKED]

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; the Hazardous Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. (Supp 2009) § 2-15-101 *et seq.*

DATES:

Comment Period:

March 5 through April 16, 2010; July 15 through August 16, 2010.

Public Hearings:

April 22, 2010 Hazardous Waste Management & Advisory Council

August 24, 2010 Environmental Quality Board

Adoption:

August 24, 2010

Approved by Governor:

September 17, 2010

Effective:

Immediately upon Governor's approval.

Expiration Date:

Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

None.

INCORPORATIONS BY REFERENCE:

None.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then rescheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Additionally, the Environmental Quality Board cancelled its June 2010 meeting where the proposed rules were to have been heard.

Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances.

The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule revocation adoption.

ANALYSIS:

Title 252, Chapter 220 was originally promulgated to implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.*, in order to foster voluntary redevelopment and reuse of abandoned, idled or underused industrial or commercial facilities at which expansion or redevelopment of the real property is complicated by pollution. Subsequently, the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, was amended to provide specific grant programs for Brownfields with specific eligibility requirements and to provide further protections for those persons redeveloping Brownfields sites. Additionally, the Oklahoma legislature amended the state Brownfields law in 2009 to better streamline the Brownfields program.

Therefore, the current Brownfields rules, Chapter 220, became inconsistent with both federal and state law. The DEQ proposes to revoke Chapter 220 and adopt a new Chapter to cover much of the same content but in a more streamlined context and format. Additionally, the Revolving Loan Fund rules were rewritten to be in compliance with the federal law.

This rule revocation process is progressing in tandem with the rulemaking process of the new Chapter 221. For further information, refer to the Notice of Rulemaking Intent for Chapter 221.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

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., § 253(D):

SUBCHAPTER 1. PURPOSE, AUTHORITY AND APPLICABILITY [REVOKED]

252:220-1-1. Purpose, authority and applicability [REVOKED]

- (a) **Authority.** ~~The rules in this Chapter implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 et seq.~~
- (b) **Promulgation.** ~~252:220 was promulgated and adopted pursuant to the Act, specifically 27A O.S. § 2-15-104.~~
- (c) **Qualification.** ~~Any person who qualifies under § 2-15-103 of the Act may apply for a Certificate of Completion or a Certificate of No Action Necessary.~~

252:220-1-2. Methodology [REVOKED]

All analytical and sampling methods used to comply with 252:220 shall be approved ASTM or EPA procedures or procedures approved by the DEQ. Any reference to an ASTM or EPA Method refers to the latest published procedure.

252:220-1-3. Definitions [REVOKED]

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

- "**Act**" means ~~The Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 et seq. as amended.~~
- "**ASTM**" means ~~the American Society for Testing and Materials.~~
- "**Certificate**", as used in these rules, shall mean ~~Certificate of Completion and Certificate of No Action Necessary.~~
- "**DEQ**" means ~~the Oklahoma Department of Environmental Quality.~~
- "**Draft cleanup plan**" means ~~"draft permit" as used in the Oklahoma Environmental Permitting Act.~~
- "**Final cleanup plan**" means ~~"final permit" as used in the Oklahoma Environmental Permitting Act.~~
- "**Regulated substance**", for purposes of this Act only, means ~~any substance regulated under the Environmental Quality Code or rules promulgated pursuant thereto.~~
- "**Tier I**" ~~[See 252:2-15.]~~
- "**Tier II**" ~~[See 252:2-15.]~~

252:220-1-4. Terms not defined by Code or rule [REVOKED]

Any term not defined in the ~~Oklahoma Environmental Quality Code or 252 (Oklahoma Administrative Code, Department of Environmental Quality)~~, shall be defined by:

- (1) ~~The Dictionary of Geological Terms, Latest Revised Edition, American Geological Institute,~~
- (2) ~~EPA Guidance Documents,~~
- (3) ~~Its generally accepted scientific meaning, or~~
- (4) ~~Its standard dictionary meaning.~~

252:220-1-5. Consideration of other laws [REVOKED]

~~The owner or operator of a Brownfield must comply with all applicable state and federal laws and rules.~~

SUBCHAPTER 3. APPLICATIONS [REVOKED]

252:220-3-1. Application process [REVOKED]

~~The application process for a Certificate, including notice and public participation, shall be in accordance with the Uniform Environmental Permitting Act and 252:002.~~

252:220-3-2. Application content [REVOKED]

- (a) **Eligibility.** ~~The applicant must provide sufficient information to the DEQ for the DEQ to determine whether the applicant is eligible under the law to apply for liability protection under Brownfields.~~
- (b) **Information.** ~~The applicant shall provide the DEQ with the information specified in the Oklahoma Brownfields Voluntary Redevelopment Act and Subchapter 5, Rules 5-1 through 5-4, inclusive. [See 27A O.S. § 2-15-105.]~~

SUBCHAPTER 5. PROCEDURE [REVOKED]

252:220-5-1. Site characterization [REVOKED]

- (a) **Memorandum of Agreement.** ~~The applicant and the DEQ shall execute a Memorandum of Agreement (MOA) for site characterization, including a provision for reasonable oversight costs.~~
- (b) **Required plans.** ~~The applicant shall submit a work plan, a quality assurance project plan (QAPP), a sampling and analysis plan (SAP) and a health and safety plan (HSP) for site characterization.~~
- (c) **Report.** ~~The applicant shall submit the following necessary data in a site characterization report:~~
 - (1) ~~Summary of a title search document;~~
 - (2) ~~Complete operational history of the site;~~
 - (3) ~~Information about the current use(s) of the property;~~
 - (4) ~~Documentation which identifies all potential receptors, human and ecological, and potential contamination migration pathways;~~
 - (5) ~~Delineation of all sources of contamination associated with the site, including contaminated soil, and the location, size, constituents and concentrations of each source;~~
 - (6) ~~Delineation of the nature and extent of contamination; and~~
 - (7) ~~Any site specific information requested by the DEQ.~~
- (d) **Previously prepared plans.** ~~If the applicant has already performed an environmental assessment or investigation of the~~

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proposed Brownfield site prior to contacting the DEQ, that information may be presented as part of the required site characterization. DEQ may consider this information in determining the appropriateness of further investigation of the site. DEQ may require verification sampling to validate the information submitted. If the information submitted does not fully address the requirements of the program, DEQ may also require the applicant to collect additional data.

252:220-5-2. Risk assessment

(a) ~~Land use disclosure.~~ The applicant shall identify the future use of the contaminated property.

(b) ~~Risk based cleanup levels.~~ Using risk assessment methodology approved by the DEQ, the applicant shall:

- (1) Calculate a default risk based cleanup level; or
- (2) Conduct a risk assessment of the contaminated property to produce site specific risk based cleanup levels.

252:220-5-3. Remedial option evaluation [REVOKED]

(a) ~~Remedial options.~~ The applicant shall identify remedial option(s) and shall submit narrative information which discusses risk based cleanup levels, economic feasibility, technical feasibility, and reliability of each remedial option considered, including a discussion of institutional controls needed for each option to maintain future use of the site.

(b) ~~Preferred option.~~ The applicant shall identify the preferred option.

252:220-5-4. Remediation plan for preferred option [REVOKED]

(a) ~~Statutory requirements.~~ The applicant shall submit information required by the Act in the remediation plan for the preferred option.

(b) ~~Other requirements.~~ The applicant shall also identify:

- (1) The remedial action objectives (RAOs);
- (2) All applicable state and federal laws, rules, standards, limitations, criteria and requirements;
- (3) Methods to verify how risk based cleanup levels will be achieved; and
- (4) Future monitoring and maintenance requirements.

252:220-5-5. Draft site cleanup plan [REVOKED]

The DEQ shall compile from documents submitted a draft site cleanup plan for public review.

252:220-5-6. Final site cleanup plan [REVOKED]

The DEQ shall issue a final site cleanup plan in accordance with the Uniform Permitting Procedures, 252:002-15.

252:220-5-7. Consent Order [REVOKED]

If a final site cleanup plan is issued, the applicant and the DEQ shall execute a Consent Order for site remediation.

252:220-5-8. Workplan [REVOKED]

The applicant shall submit the workplan to the DEQ for approval, including but not limited to the following:

- (1) The design requirements to obtain the RAOs;
- (2) Project and construction management plans; and
- (3) A remediation schedule.

252:220-5-9. Final report [REVOKED]

The applicant shall submit a final report which summarizes all remedial work, including the verification sampling results.

SUBCHAPTER 7. CERTIFICATES [REVOKED]

252:220-7-1. No action determination [REVOKED]

Upon a determination that no action is necessary, the DEQ shall issue a Certificate of No Action Necessary to the applicant in accordance with the Act.

252:220-7-2. Completion of Remediation Project [REVOKED]

Upon final inspection and approval of work, the DEQ shall issue a Certificate of Completion to the applicant in accordance with the Act.

252:220-7-3. Filing [REVOKED]

The applicant shall file the Certificate and submit a file-stamped copy to the DEQ in accordance with the Act. [27A O.S. § 2-15-107.]

SUBCHAPTER 9. VERIFICATION OF BROWNFIELDS PROJECTS [REVOKED]

252:220-9-1. Applicability [REVOKED]

This Subchapter applies to Brownfields projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account pursuant to 82 O.S. § 1084.1 *et seq.* and other state or federal funding sources.

252:220-9-2. Verification of projects [REVOKED]

The DEQ shall verify eligibility of Brownfields projects to the Oklahoma Water Resources Board or other appropriate state or federal funding entities. Additionally, the DEQ shall cooperate with appropriate funding entities in identifying water quality benefits under the federal Clean Water Act by providing the following information upon request of the funding entity:

- (1) verification of eligibility as a Brownfields project;
- (2) verification that runoff from the project potentially impacts water quality; and
- (3) documentation of potential water quality benefits.

**SUBCHAPTER 11. BROWNFIELDS CLEANUP
REVOLVING LOAN FUNDS (BCRLF)
[REVOKED]**

**252:220-11-1. Purpose, authority and applicability
[REVOKED]**

(a) **Purpose.** The purpose of this Subchapter is to implement Executive Order 98-37, mandating state agencies to establish criteria for local project funding contracts, and to comply with the provisions of Superfund Brownfields Revolving Loan Fund Assistance Agreement #BL-988684801-0 (*Cooperative Agreement*).

(b) **Authority.** This subchapter is adopted pursuant to 27A O.S. § 2-2-101 *et seq.* and § 2-15-101 *et seq.*, 75 O.S. § 302 and Executive Order 98-37.

(c) **Applicability.** The rules in this Subchapter apply to any private entity, political subdivision or unit of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use Brownfields Cleanup Revolving Loan Funds (BCRLF) for non-time critical removal activities as defined in the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA, 42 United States Code § 9601(23)] and described in the National Oil and Hazardous Substances Pollution Contingency Plan [NCP, 40 CFR § 300.415].

(d) **Other requirements.**

(1) **Oklahoma Department of Commerce.** The Oklahoma Department of Commerce (ODOC), may be the BCRLF Fund Manager responsible for ensuring that the BCRLF applicants meet all financial requirements. Applicants are on notice that the ODOC may have specific rules governing loan applications and eligibility requirements.

(2) **Federal "cross-cutting" requirements.** "Cross-cutting requirements" are those federal requirements in addition to CERCLA and associated administrative authorities which are applicable to the BCRLF by operation of federal statutes, President's Executive Orders and federal regulations. These cross-cutting federal authorities apply by their own terms to projects and activities receiving federal financial assistance regardless of whether the statute authorizing the assistance mentions them specifically. BCRLF cross-cutters include but are not limited to social and economic policy authorities such as equal employment opportunities (President's Executive Order 11246) and government-wide debarment and suspension rules (President's Executive Order 12549), the Demonstration Cities and Metropolitan Development Act, procurement prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, Anti-lobbying provisions of 40 CFR Part 30, Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, the Contract Work Hours and Safety Standards Act, Anti-kickback Acts, the Women and Minority Business Enterprise Act, Section 13 of the Federal Water Pollution Act amendments, the Drugfree Workplace Act of 1988, Section 504 of the Rehabilitation Act of 1973

and Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988.

252:220-11-2. Definitions [REVOKED]

In addition to the definitions found in OAC 252:220-1-3, the following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**BCRLF response**" means the same as non-time critical removal action as defined in CERCLA, 42 U.S.C. § 9601(23).

"**Borrower**" means a public or private entity that uses BCRLF funds for cleanup and cleanup-related activities and agrees to the terms of a loan agreement between itself and the DEQ and ODOC.

"**Governmental borrower**" means states, tribes and political subdivisions as defined at 40 CFR 35.6015.

"**Loan discount**" means a decision by the DEQ and ODOC to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions.

"**Nonprofit borrower**" means organizations which meet the definition of a nonprofit entity in Paragraph 4 of OMB Circular A-122.

252:220-11-3. Borrower eligibility [REVOKED]

(a) An owner/operator (o/o) who was the generator or transporter of contamination at that site is not eligible for a BCRLF pilot loan for that same site.

(b) An owner/operator of a brownfields site is an eligible borrower for a BCRLF pilot loan for that same site only if

(1) the DEQ determines that the o/o would fall under a statutory exemption from liability; or

(2) the EPA could use its enforcement discretion to not pursue the party under CERCLA, as described by EPA guidance; and

(3) the o/o of contaminated brownfields property acquired the property after the time of disposal or placement of hazardous substances and the DEQ determines that the o/o has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from that property.

252:220-11-4. Ineligible fund uses [REVOKED]

(a) **Ineligible activities.** BCRLF funds shall not be used for any of the following activities, including but not limited to:

(1) Pre-cleanup environmental response activities, such as site assessment, identification, and characterization;

(2) Cleanup of a naturally occurring substance; cleanup of products that are part of the structure of and result in exposure within residential buildings or business or community structures (e.g. interior lead-based paint contamination or asbestos which results in indoor exposure); or cleanup of public or private drinking water supplies that have deteriorated through ordinary use;

(3) Monitoring and data collection necessary to apply for, or comply with, environmental permits under other

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state and Federal laws, unless such a permit is required as a component of the cleanup action;

(4) Development activities that are not removal actions (e.g., construction of a new facility or marketing of property); or

(5) To support job training.

(b) **Ineligible sites.** BCRLF funds shall not be used at any sites:

(1) Listed, or proposed for listing, on the National Priorities List;

(2) At which a removal action must be taken within six months (i.e., time critical removal action);

(3) Where a federal or state agency is planning or conducting a response or enforcement action; or

(4) Contaminated by petroleum products except to address a non-petroleum hazardous substance.

252:220-11-5. Environmental response requirements [REVOKED]

(a) BCRLF funds shall only be used to conduct non-time critical response actions at brownfields sites.

(b) All environmental response activities carried out using BCRLF funds shall be conducted in accordance with CERCLA and consistent with the NCP.

(c) All activities shall be conducted consistent with the community relations and public involvement requirements in the NCP.

252:220-11-6. Project selection criteria [REVOKED]

(a) **Compliance with state and federal laws and rules.** The applicant must comply with the Oklahoma Brownfields Voluntary Redevelopment Act (27A O.S. § 2-15-101 *et seq.*), the rules in this Chapter, and applicable provisions of CERCLA and the NCP.

(b) **Contribution to local community revitalization.** The applicant shall submit documentation to support its position that the cleanup of a particular site will significantly contribute to local community revitalization.

(c) **Environmental compliance history.** A borrower must submit information regarding its overall environmental compliance history. The DEQ will strongly consider this history in its analysis of the borrower as a cleanup and business risk. Each borrower must certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan. An entity that has been suspended, debarred or otherwise declared ineligible, as those terms are defined in 40 CFR Part 32, cannot be a borrower.

252:220-11-7. Protocol for demonstrating eligibility [REVOKED]

The borrower shall provide the following documentation to the DEQ:

(1) Description of project to be funded;

(2) How loan monies will be used;

(3) Explanation of how the project, if selected, would be consistent with BCRLF program objectives; and

(4) Environmental compliance history.

252:220-11-8. Special terms and conditions [REVOKED]

The following terms and conditions are incorporated by reference into each borrower's loan agreement:

(1) Borrower shall use funds only for eligible activities.

(2) Borrowers shall document all funds used.

(3) Borrower shall maintain documentation for a minimum of ten (10) years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever is longer. Borrowers shall obtain written approval from the DEQ prior to disposing of records.

(4) Borrowers shall use no more than ten percent (10%) of the loan for allowable non-cleanup activities.

(5) Borrowers shall conduct BCRLF response activities in accordance with the cooperative agreement and CERCLA and consistent with the NCP.

(6) Borrowers shall modify response activities as required by the DEQ.

(7) Borrowers shall comply with CERCLA § 104(g) [42 USC § 9604(g)] by requiring that laborers and mechanics employed by the borrower or its contractors or subcontractors in the performance of construction, alteration, or repair work are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Department of Labor in accordance with the Davis Bacon Act.

(8) Borrowers must comply with the Uniform Relocation Act and other applicable federal "cross-cutting" requirements.

(9) Borrowers shall use loan funds promptly for costs incurred in connection with the cleanup. Interest accumulating on schedule disbursements shall be applied to the cleanup.

252:220-11-9. Loan discount [REVOKED]

(a) **Nonprofit borrowers.** Nonprofit borrowers may forgo repayment of up to 30% of the loan amount on a site specific basis upon approval by the DEQ and ODOC.

(b) **Governmental borrowers.** Governmental borrowers may forgo repayment of up to 20% of the loan amount on a site specific basis upon approval by the DEQ and ODOC.

(c) **Allowable use.** The loan repayment amount that has been discounted may only be used by the borrower to carry out allowable cleanup activities in compliance with terms of loan agreement such as compliance with CERCLA, the NCP, the Davis Bacon Act, and cross-cutting requirements applicable to the loan.

(d) **Same conditions.** The discounted amount must be expended under the same conditions as the loan itself (including compliance with CERCLA, the NCP, and other statutory obligations).

252:220-11-10. Insurance [REVOKED]

(a) Borrowers may purchase insurance, including environmental insurance, if the expense is incidental to and associated

with BCRLF costs they incur for site specific cleanup activities (e.g. workers compensation). Incidental insurance purchased by a borrower is not counted against the borrower's ten percent limit on administrative costs.

(b) ~~With U.S.EPA approval, BCRLF funds may be used to purchase environmental insurance as a non-administrative cost if the purchase of such insurance is necessary to carry out other removal activities. Removal activities associated with BCRLF funded insurance must be carried out in accordance with the terms and conditions of the cooperative agreement, CERCLA and the NCP.~~

[OAR Docket #10-1220; filed 10-8-10]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 221. BROWNFIELDS**

[OAR Docket #10-1221]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions [NEW]
- Subchapter 3. The Brownfield Program [NEW]
- Subchapter 5. Verification of Brownfields Projects [NEW]
- Subchapter 7. Revolving Loan Funds (RLF) [NEW]

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; the Hazardous Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. (Supp. 2009) § 2-15-101 *et seq.*

DATES:

Comment Period:

March 5 through April 16, 2010; July 15 through August 16, 2010.

Public Hearings:

April 22, 2010 Hazardous Waste Management & Advisory Council
August 24, 2010 Environmental Quality Board

Adoption:

August 24, 2010

Approved by Governor:

September 17, 2010

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meetings originally scheduled for January 28, 2010, and then rescheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Additionally, the Environmental Quality Board cancelled its June 2010 meeting due to inclement weather. Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ found it necessary to offer the proposed rules to the HWMAC as emergency rules in its April 2010 rulemaking hearing. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred

land and controlled substances. The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds.

The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule adoption.

ANALYSIS:

The Oklahoma Legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15, effective July 1, 2009. A new chapter of Brownfields rules has been developed to be consistent with the Brownfields law as well as to be compliant with U.S.E.P.A. Brownfields program policies.

The rules in Subchapter 1, General Provisions, include definitions, methodology, transitioning from voluntary cleanup to Brownfields, Superfund and Brownfields, Responsible Parties and other topics.

The Brownfields Program, Subchapter 3, describes the program and its requirements for participation. These rules address eligibility, site characterization, future use, risk evaluation, risk-based cleanup levels, remedial option evaluation, preferred option, approval process, public participation, evaluation of public comments, remediation plans, completion of remedial actions and other topics.

Subchapter 5, Verification of Brownfields Projects, contains the same rules as in Chapter 220. There are two rules, one dealing with applicability and the other with verification of projects. These rules pertain to projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account, 82 O.S. § 1084.1 *et seq* and other state or federal funding sources.

Revolving Loan Funds, Subchapter 7, are funds available to private entities, political subdivisions or units of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use the funds for brownfield cleanup activities. The rules in this subchapter address federal cross-cutting requirements, borrower eligibility, eligible and ineligible fund uses, environmental requirements, project selection criteria, public involvement, special terms and conditions, loan discounts and other topics.

The DEQ proposes to revoke the current chapter of Brownfields rules, OAC 252:220, subsequent to OAC 252:221 being adopted. This rulemaking is progressing in tandem with the rule revocation process of Chapter 220 and three rules in Chapter 4, *i.e.* 252:4-7-61, 62 and 63. For further information, refer to the Notice of Rulemaking Intent for Chapter 220 and the Notice of Rulemaking Intent for Chapter 4.

CONTACT PERSON:

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

SUBCHAPTER 1. GENERAL PROVISIONS

252:221-1-1. Purpose, authority and applicability

(a) Purpose. The purpose of the Brownfield program is to provide for the safe reuse of brownfield properties and provide a mechanism for landowners to resolve or manage their environmental liability to the government.

(b) Authority. The rules in this Chapter implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.*, as amended.

(c) Applicability. Any person who qualifies under 27A O.S. § 2-15-103 may participate in the Brownfield program and receive a Certificate of Completion or a Certificate of No Action Necessary upon successful completion of a Brownfield Plan.

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252:221-1-2. Definitions

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

"ASTM" means the American Society for Testing and Materials.

"Brownfield" is defined at 27A O.S. § 2-15-103(2)

"Brownfield Plan" means the approved plan that specifies the brownfield remedy for a property.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 *et seq.*, also known as Superfund.

"Certificate" means a Certificate of Completion or a Certificate of No Action Necessary. See further "Certificate of Completion" and "Certificate of No Action Necessary" at 27A O.S. § 2-15-103(3), (4) and (7).

"Consent Order" is defined at 27A O.S. § 2-15-103(5)

"Demonstrated pattern of uncorrected noncompliance" is defined at 27A O.S. § 2-15-103(6).

"DEQ" means the Oklahoma Department of Environmental Quality.

"NCP" means the National Oil and Hazardous Substance Pollution Contingency Plan, 40 CFR Part 300.

"Participant" is defined at 27A O.S. § 2-15-103(1).

"Pollution" is defined at 27A O.S. § 2-1-102.

"Proposal" means the document submitted to the DEQ that sets forth the participant's concept, technical data and intended actions for remediation or no action necessary in accordance with 27A O.S. § 2-15-101 *et seq.* and the rules in this Chapter.

"Public Forum" means a gathering for the purpose of discussion of a participant's proposal and any amendments to that document.

"Remediation" is defined at 27A O.S. § 2-15-103(9).

"Risk-based remediation" is defined at 27A O.S. § 2-15-103(10).

"Site characterization" is defined at 27A O.S. § 2-15-103(11).

252:221-1-3. Methodology

All analytical and sampling methods used to comply with this Chapter shall be approved ASTM or EPA procedures or analytical methods and procedures approved by the DEQ. Any reference to an ASTM or EPA Method refers to the latest published procedure.

252:221-1-4. Terms not defined by Code or rule

Any term not defined in the Oklahoma Environmental Quality Code (27A O.S. § 1-2-101 *et seq.* or Title 252 of the Oklahoma Administrative Code shall be defined by:

- (1) The Dictionary of Geological Terms, latest revised edition, American Geological Institute.
- (2) Its generally accepted scientific meaning, or
- (3) Its standard dictionary meaning.

252:221-1-5. Consideration of other laws

The participant must comply with all applicable state and federal laws and rules.

252:221-1-6. Transitioning from Voluntary Cleanup Program to Brownfield Program

A participant in the Voluntary Cleanup Program may transition to the Brownfield Program by notifying the Brownfield Program in writing and meeting the requirements in 27A O.S. § 15-101 *et seq.* and the rules in this Chapter.

252:221-1-7. Superfund and Brownfield

Deleted National Priorities List (NPL, aka Superfund) sites are eligible for Brownfield certification if the program requirements are met.

252:221-1-8. Responsible parties

(a) Entities responsible for contaminating the property may participate in the Brownfield program.

(b) Participants may choose to be consistent with the NCP to reserve their rights to cost recovery under CERCLA 107 (42 U.S.C 9607).

SUBCHAPTER 3. THE BROWNFIELD PROGRAM

252:221-3-1. General requirements

All participants shall enter into a consent order with the DEQ, characterize the site, evaluate the risk the site poses to the selected future use, evaluate cleanup alternatives if a risk is present, select a remedial option, prepare a proposal, notify the public of an opportunity to review and comment on the proposal, reimburse DEQ for its reasonable oversight costs and remedy the risk or request a no action determination in accordance with 27A O.S. § 15-101 *et seq.* and the rules in this Chapter.

252:221-3-2. Process

(a) **Eligibility.** The participant must provide sufficient information for the DEQ to determine whether :

- (1) the participant is eligible for liability protection under the state Brownfields law; and
- (2) the site qualifies for the EPA enforcement bar under CERCLA.

(b) **Information.** The participant shall provide the DEQ with information specified in 27A O.S. § 2-15-105 and this Chapter.

(c) **Project tracking database.** The participant shall submit the name of the site, with the latitude and longitude, legal description, and street address as well as contact information for the participant.

252:221-3-3. Proposal

(a) The participant shall develop a Proposal in accordance with 27A O.S. § 2-15-105 and the rules in this Chapter and shall propose either a remedial option or a request for a no action necessary determination. DEQ and the participant shall consider the history of the site and surrounding area in determining the type of sampling and analysis to be conducted and risk-based decision making.

(b) **Site characterization.** In addition to the requirements of 27A O.S. § 2-15-105, the participant shall submit a work plan for site characterization, which includes a plan to control the quality of the data generated for the project commensurate with the complexity of the site, a discussion of existing data, the data gaps, a sampling plan to delineate areas of contamination, and a contaminant and site-specific plan to protect worker and public health and safety during site work.

(c) **Previously acquired data.** The participant may submit previously generated data, if appropriate, with corresponding Quality Assurance/Quality Control documentation. Temporal issues will be considered on a site by site basis. The DEQ may consider this information in determining the appropriateness of further investigation of the site.

(1) The DEQ may require verification sampling to validate the information submitted.

(2) If the information submitted does not fully address the requirements of the Brownfield program, the participant shall collect additional data as required by the DEQ.

(3) The DEQ may require additional analytes, at its discretion.

(d) **Future use.** The participant shall identify the future use of the contaminated property. If the future use of the site is other than "unrestricted use", the Proposal must include a plan for the implementation and maintenance of engineering and institutional controls and a plan for long term stewardship.

(e) **Risk evaluation.** On a site specific basis, the participant shall identify and evaluate all potential receptors and exposure pathways. If the proposal claims that an exposure pathway is not complete and therefore no receptor is threatened, specific information must be provided that documents and supports the claim.

(f) **Risk-based cleanup levels.** Using risk evaluation methodology approved by the DEQ, the participant shall:

(1) compare site contaminant levels to published screening levels approved by the DEQ;

(2) calculate a default risk-based cleanup level in accordance with DEQ guidance; or

(3) conduct a risk assessment of the contaminated property to produce site-specific risk-based cleanup levels. DEQ must approve the model and input parameters used in any risk assessment.

(g) **Remedial option evaluation.** The participant shall identify alternatives for remediation and shall submit narrative information which discusses each alternative's risk-based cleanup levels, protectiveness, economic feasibility, technical feasibility, and reliability of each remedial alternative considered. Additionally, the participant shall include a discussion of engineering and institutional controls needed for each option to maintain the remedy and control the use of the property in

the future. Examples of specific institutional controls must be included in the Proposal for evaluation unless the future use is "unrestricted use".

(h) **Preferred option.** The participant shall identify its preferred option.

(i) **No Action Determination.** A request for a no action determination does not require a remedial option evaluation as described in subsection (f) above.

(j) **Submittal.** The Proposal must be written in plain language, with technical terms defined. The participant shall submit two paper copies and one electronic copy of the Proposal to the DEQ for review and comment.

252:221-3-4. Approval process

(a) The DEQ will review and comment on participant's Proposal and may ask for additional information. All additional submittals made by participant shall be in duplicate with one electronic copy. The document(s) will be added to the original Proposal as amendments.

(b) When the DEQ and the participant are satisfied that the Proposal will be protective of human health and the environment and that the Proposal adequately addresses long term stewardship, the Proposal (as amended) shall be made available for public review as specified in the following section.

252:221-3-5. Public participation

(a) **Public review.** The participant must make the Proposal and its amendments available to the public for review for 20 working days. The Proposal must be placed at a convenient location local to the site that provides easy access to the public to review.

(b) **Public notice.** The participant must place a public notice in a newspaper of general circulation local to the site announcing the availability of the Proposal for public review and comment. The notice must include, at a minimum:

(1) the name(s) and contact information of the participant(s);

(2) the site name;

(3) the location (street address and legal description) of the site;

(4) the proposed future use of the property;

(5) the proposed remedy;

(6) the location where the Proposal may be reviewed;

(7) the beginning and ending dates for the 20 working day review and comment period;

(8) the opportunity to request a public forum on the Proposal and its amendments within the 20 working day review period; and

(9) the DEQ contact person and mailing address where comments will be received.

(c) **Public forum.** If the DEQ receives a timely request for a public forum on the Proposal and its amendments and determines that there is a significant degree of public interest in the Proposal, the DEQ shall expeditiously schedule and hold a public forum. Notice of the forum shall be given to the public at least 10 working days prior to the public forum in the same manner as in subsection (b) above. The public forum shall be

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held at a location convenient to and near the Brownfield site. The participant must attend the meeting or send a designated representative.

252:221-3-6. Evaluation of public comments

The DEQ will prepare a responsiveness summary for all comments received. After consideration of the comments, the DEQ may require the participant to revise the Proposal in a manner that satisfies the public's concerns or may accept the Proposal.

252:221-3-7. Request for a No Action Necessary determination

In accordance with 27A O.S. § 2-15-106 (D), the participant may select to pursue a no action necessary determination as the preferred option. DEQ approval will be based on information and procedure required in 27A O.S. § 2-15-101 *et seq* and the rules in this Chapter demonstrating that level of contamination at the site, if any, does not pose an unreasonable risk to human health and safety or to the environment for the prescribed future use.

252:221-3-8. Remediation plan for preferred option

(a) **Statutory requirements.** The participant shall submit information required by 27A O.S. § 2-15-101 *et seq* and the rules in this Chapter in the remediation plan for the preferred option.

(b) **Proposal.** The remediation plan shall incorporate the Proposal and shall provide the technical information necessary for implementation of the Proposal.

(c) **Additional requirements.** The participant shall also identify the following in the remediation plan:

- (1) The cleanup levels and design requirements to obtain them;
- (2) All applicable state and federal laws, rules, standards, limitations, criteria and requirements;
- (3) Methods to verify how risk-based cleanup levels will be achieved;
- (4) Project and Construction Management plan;
- (5) Remediation schedule;
- (6) Future monitoring and maintenance requirements; and
- (7) A specific plan for long-term stewardship if the future use is not "unrestricted use". If active long-term maintenance of the remedy is required, the plan must include information on how funding for the maintenance will be provided.

(d) **Interim remedial action.** If an environmental problem is discovered before the remediation plan is finalized, an interim measure may be proposed for DEQ approval.

(e) **DEQ approval required.** Other than interim remedial action, the participant may not begin remediation until DEQ approves the remediation plan.

252:221-3-9. Pre-certification inspection and written report

Within thirty (30) calendar days after participant concludes that the remedial action has been fully performed, participant shall notify DEQ and shall schedule and conduct a pre-certification inspection to be attended by DEQ. The pre-certification inspection shall be followed by a written report submitted within thirty (30) calendar days of the inspection by participant's project manager, certifying that the remedial action, including confirmation sample data, has been completed in full satisfaction of the requirements of the Consent Order.

252:221-3-10. Further remedial action

If, after completion of the pre-certification inspection and receipt and review of the written report, DEQ determines that the remedial action or any portion thereof has not been completed in accordance with this Chapter or the Consent Order, DEQ shall notify Participant in writing of the activities that must be undertaken to complete the remedial action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein.

252:221-3-11. Completion of remedial action.

Once DEQ concludes that the remedial action has been fully performed in accordance with 27A O.S. § 2-15-101 *et seq*, this Chapter and the Consent Order, DEQ will notify participants that the remedial action is complete.

252:221-3-12. Certificates

(a) **Certificate of No Action Necessary.** Upon determination by the DEQ that no action is necessary, the participant shall receive Certificate of No Action Necessary.

(b) **Certificate of Completion.** Upon final inspection and approval of work by the DEQ, the participant shall receive a Certificate of Completion.

(c) **Certificates.** Language in the Certificates shall comply with 27A O.S. § 2-7-123 and § 2-15-101 *et seq*.

(d) **Filing.** The participant shall file the Certificate in the county land records and submit a file-stamped copy to the DEQ in accordance with 27A O.S. § 2-7-123 and § 2-15-107.

SUBCHAPTER 5. VERIFICATION OF BROWNFIELDS PROJECTS

252:221-5-1. Applicability

This Subchapter applies to Brownfields projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account pursuant to 82 O.S. § 1084.1 *et seq.* and other state or federal funding sources.

252:221-5-2. Verification of projects

The DEQ shall verify eligibility of Brownfields projects to the Oklahoma Water Resources Board or other appropriate state or federal funding entities. Additionally, the DEQ shall cooperate with appropriate funding entities in identifying water quality benefits under the federal Clean Water Act by providing the following information upon request of the funding entity:

- (1) verification of eligibility as a Brownfields project;
- (2) verification that runoff from the project potentially impacts water quality; and
- (3) documentation of potential water quality benefits.

SUBCHAPTER 7. REVOLVING LOAN FUNDS (RLF)

252:221-7-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Subchapter is to implement Executive Order 98-37, mandating state agencies to establish criteria for local project funding contracts.

(b) **Authority.** This subchapter is adopted pursuant to 27A O.S. § 2-2-101 *et seq.* and § 2-15-101 *et seq.*, 75 O.S. § 302 and Executive Order 98-37.

(c) **Applicability.** The rules in this Subchapter apply to any private entity, political subdivision or unit of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use Revolving Loan Funds (RLF) for brownfield cleanup activities.

(d) **Oklahoma Department of Commerce.** The Oklahoma Department of Commerce (ODOC) is the RLF Fund Manager responsible for ensuring that the RLF applicants meet all financial requirements. Applicants are on notice that the ODOC may have specific rules governing loan applications and eligibility requirements.

(e) **Federal "cross-cutting" requirements.** "Cross-cutting requirements" are those federal requirements in addition to CERCLA and associated administrative authorities which are applicable to the RLF by operation of federal statutes, President's Executive Orders and federal regulations. These cross-cutting federal authorities apply by their own terms to projects and activities receiving federal financial assistance regardless of whether the statute authorizing the assistance mentions them specifically. RLF cross-cutters include but are not limited to social and economic policy authorities such as equal employment opportunities (President's Executive Order 11246) and government wide debarment and suspension rules (President's Executive Order 12549), the Demonstration Cities and Metropolitan Development Act, procurement prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, Anti-lobbying provisions of 40 CFR Part 30, Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, the Contract Work Hours and Safety Standards Act, Anti-kickback Acts, the Women and Minority Business Enterprise Act, Section 13 of the Federal Water Pollution Act amendments, the Drugfree Workplace Act of 1988, Section 504 of the Rehabilitation Act of 1973 and Section 129

of the Small Business Administration Reauthorization and Amendment Act of 1988 and the Davis-Bacon Act.

252:221-7-2. Definitions

In addition to the definitions found in OAC 252:221-1-3, the following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Administrative Record" means a record available to the public, containing all relevant site information and documents that form the basis for the selection of a cleanup.

"Brownfield", as used in this subchapter, is defined in 42 U.S.C. § 9601(39) and has a different meaning than the term as used in Subchapters 1, 3 and 5 of this Chapter.

"RLF response" means planned cleanup actions.

"Borrower" means a public or private entity that uses RLF funds for cleanup and cleanup-related activities and agrees to the terms of a loan agreement between itself and the DEQ and ODOC.

"Eligible response site" means properties that do not meet the definition of a Brownfield but may be eligible if EPA makes a property-specific determination that the site is eligible for funding.

"Governmental borrower" means states, tribes and political subdivisions as defined at 40 CFR 35.6015.

"Loan discount" means a decision made by the DEQ and ODOC under OAC 252:221, to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions.

"Nonprofit borrower" means "nonprofit organization" as defined in accordance with the Federal Financial Assistance Management Improvement Act of 1999, 31 U.S.C. 6101.

"Private borrower" means a for profit company or private individual not representing a governmental entity or nonprofit organization.

"Subgrant" means a portion of the RLF award available as grants to eligible entities, at the DEQ's discretion.

252:221-7-3. Borrower eligibility

(a) An owner/operator (o/o) who was the generator or transporter of contamination at the site is not eligible for a RLF loan/grant for that same site.

(b) An owner who does not qualify as an innocent landowner, contiguous property owner, or bona fide prospective purchaser is not eligible for an RLF loan.

(c) A government entity may borrow RLF funds to clean up property acquired through eminent domain.

252:221-7-4. Eligible uses

The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances as defined in the Controlled Substances Act, 21 U.S.C. § 802.

252:221-7-5. Ineligible fund uses

(a) **Ineligible activities.** RLF funds shall not be used for any of the following activities, including but not limited to:

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- (1) Pre-cleanup environmental response activities, such as site assessment, identification, and characterization;
 - (2) Monitoring and data collection necessary to apply for, or comply with, environmental permits under other state and Federal laws, unless such a permit is required as a component of the cleanup action;
 - (3) Development activities that are not cleanup actions (e.g., construction of a new facility or marketing of property);
 - (4) To support job training; or
 - (5) Indirect costs.
- (b) **Ineligible sites.** RLF funds shall not be used at any sites:
- (1) Listed, or proposed for listing, on the National Priorities List; or
 - (2) That do not meet the definition of an eligible response site.

252:221-7-6. Environmental requirements

- (a) RLF funds shall only be used to conduct cleanup actions at brownfields sites, as brownfield is defined in this subchapter.
- (b) All cleanup actions funded by the RLF must meet the following:
- (1) the requirements of a state approved program;
 - (2) EPA Brownfield RLF Programmatic Requirements as specified in EPA's Revolving Loan Fund Grant Program Administration Manual December 2008, as updated; and
 - (3) relevant and appropriate provisions of CERCLA and the NCP.

252:221-7-7. Project selection criteria

- (a) **Funding available.** Loans will be made to eligible projects as funding allows.
- (b) **Priority projects.** Priority will be given to projects that
- (1) remove environmental risks as opposed to managing them long term;
 - (2) use deconstruction techniques to remove structures as opposed to demolition;
 - (3) use sustainable material management techniques for demolition/deconstruction wastes;
 - (4) redevelop property using LEED standards or promote energy efficiency;
 - (5) promote reuse by a green industry;
 - (6) use sustainable landscaping or sustainable redevelopment techniques;
 - (7) create green jobs;
 - (8) facilitate the creation of, preservation of or addition to a park, a greenspace; undeveloped property, recreational property or other property used for nonprofit purposes;
 - (9) meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community; or
 - (10) facilitate the use or reuse of existing infrastructure.
- (c) **Compliance with state and federal laws and rules.** The borrower/grantee must comply with the the rules in this

subchapter, the agency of jurisdiction's rules, and relevant and appropriate provisions of CERCLA and the NCP.

(d) **Contribution to local community revitalization.** The borrower/grantee shall submit documentation to support its position that the cleanup of a particular site will significantly contribute to local community revitalization.

(e) **Environmental compliance history.** A borrower/grantee must submit information regarding its overall environmental compliance history. The DEQ will strongly consider this history in its analysis of the borrower/grantee as a cleanup and business risk. Each borrower/grantee must certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan. An entity that has been suspended, debarred or otherwise declared ineligible, as those terms are defined in 40 CFR Part 32, cannot be a borrower/grantee.

252:221-7-8. Protocol for demonstrating eligibility

The borrower/grantee shall provide the following documentation to the DEQ:

- (1) Description of project to be funded;
- (2) How loan or grant monies will be used;
- (3) Explanation of how the project, if selected, would be consistent with RLF program objectives;
- (4) Environmental compliance history; and
- (5) Documentation showing that the potential borrower/grantee is an innocent landowner, contiguous property owner, bona fide prospective purchaser or other proof of non-responsibility for the environmental contaminants that are the subject of the cleanup; and
- (6) If the borrower/grantee is selected for a loan/grant, he/she must submit the following additional documents:
 - (i) Analysis of Brownfields Cleanup Alternatives (ABCA);
 - (ii) Community Involvement Plan; and
 - (iii) Quality Assurance Project Plan (QAPP).

252:221-7-9. Public Involvement

(a) **Community Involvement Plan.** The Borrower/grantee must involve the public in the process prior to site cleanup. This public process involvement must be documented in the Community Involvement Plan.

(b) **Administrative record.** The Borrower/grantee must establish an administrative record for this site and must make the administrative record available to the public for review for 30 calendar days. The administrative record must be placed at a convenient location that provides easy access to the public to review.

(c) **Public notice.** The Borrower/grantee must place a public notice in a newspaper of general circulation local to the site announcing the availability of the administrative record for public review and comment. The notice must include, at a minimum:

- (1) the name(s) and contact information of the participant(s);
- (2) the site name;

- (3) the location (street address and/or legal description) of the site;
- (4) the proposed future use of the property;
- (5) the proposed remedy;
- (6) the location where the administrative record may be reviewed;
- (7) the beginning and ending dates for the 30 calendar day review period;
- (8) the DEQ contact person and mailing address where public comments will be received.

(d) **Evaluation of public comments.** The DEQ will consider all relevant comments and prepare a responsiveness summary.

252:221-7-10. Final Decision Document

The DEQ will issue a Final Decision Document prior to a loan being made.

252:221-7-11. Special terms and conditions

The following terms and conditions are incorporated by reference into each Borrower/grantee's loan agreement:

- (1) Borrower/grantee shall use funds only for eligible activities.
- (2) Borrower/grantees shall document all funds used.
- (3) Borrower/grantee shall maintain documentation for a minimum of three (3) years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever is longer. Borrower/grantee shall obtain written approval from the DEQ prior to disposing of records.
- (4) Borrower/grantee shall conduct RLF response activities in accordance with this Subchapter, relevant and appropriate provisions of CERCLA and EPA's Revolving Loan Fund Grant Programs Administrative Manual, December 2008, as updated.
- (5) Borrower/grantees shall modify response activities as required by the DEQ.
- (6) Borrower/grantees shall comply with CERCLA § 104(g) [42 USC § 9604(g)] by requiring that laborers and mechanics employed by the Borrower/grantee or its contractors or subcontractors in the performance of construction, alteration, or repair work are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Department of Labor in accordance with the Davis Bacon Act. Borrower/grantees shall submit copies of all Davis Bacon forms to the DEQ.
- (7) Borrower/grantees must comply with the Uniform Relocation Act and other applicable federal "cross cutting" requirements.
- (8) Borrower/grantees shall use funds promptly for costs incurred in connection with the cleanup.
- (9) All distribution of funds will be as reimbursement for costs incurred.

252:221-7-12. Loan discount

DEQ may at its discretion discount a portion of a loan. DEQ will consider the Borrower's ability to pay, the impact that the cleanup and redevelopment will have on the local community, and sustainable practices in its decision.

252:221-7-13. Insurance

Borrower/grantees may purchase insurance, including environmental insurance, if the expense is necessary to carry out cleanup activities and associated cleanup activities are carried out in accordance with the terms and conditions of DEQ's loan/grant.

[OAR Docket #10-1221; filed 10-8-10]

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM**

[OAR Docket #10-1210]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 3. Credited Service
- 590:10-3-13. Credit for involuntary furlough [AMENDED]
- Subchapter 7. Retirement Benefits
- 590:10-7-18. Post-retirement employment - eligibility [AMENDED]
- Subchapter 9. Survivors and Beneficiaries
- 590:10-9-2. Death benefit payment [AMENDED]
- Subchapter 17. Step-Up Election and Benefits
- 590:10-17-10. Step-up benefits not eligible for Excess Benefit Plan [NEW]
- Subchapter 21. Excess Benefit Plan and Trust [NEW]
- 590:10-21-1. Establishment and purpose [NEW]
- 590:10-21-2. Definitions [NEW]
- 590:10-21-3. Construction [NEW]
- 590:10-21-4. Participation [NEW]
- 590:10-21-5. Payment of benefits [NEW]
- 590:10-21-6. Contributions and funding [NEW]
- 590:10-21-7. Trust fund [NEW]
- 590:10-21-8. Administration [NEW]
- 590:10-21-9. Plan amendments [NEW]
- 590:10-21-10. Nonassignability and exemption from taxation and execution [NEW]
- 590:10-21-11. Federal and state taxes [NEW]
- 590:10-21-12. Investment [NEW]
- 590:10-21-13. Conflicts and limitation of rights [NEW]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees, pursuant to 74 O.S. §§901, 909 and 909.1.

DATES:

Public Hearing:
August 19, 2010

Adoption:
August 19, 2010

Approved by Governor:
September 17, 2010

Effective:
Immediately upon Governor's approval

Expiration:
Effective through July 14, 2011, unless superseded by another rule or disapproved by the legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

Emergency Adoptions

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Agency finds 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, amendment, revision, or revocation of an existing rule. These emergency rules are necessary to implement legislation enacted in 2010 amending the Oklahoma Statutes relating to the Agency. These emergency rules are also necessary to implement the Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust which was approved on June 24, 2010, by the Internal Revenue Service as required by 74 O.S. §915.1. IRS approval was necessary for the System to maintain its plan qualification under the Internal Revenue Code.

ANALYSIS:

The amendment to 590:10-3-13 permits a leave of absence involving legislative and court employees to be credited as participating service if it is the result of an involuntary furlough. The amendment also removes obsolete language. This amendment is in accordance with Section 4 of Enrolled Senate Bill 1579 (amending 74 O.S. §913) which became effective June 7, 2010.

The amendment to 590:10-7-18 modifies the one year return to work prohibition to provide that the one year period starts from the date the retiree ended the employment with the participating employer. This amendment is in accordance with Section 3 of Enrolled Senate Bill 1889 (amending 74 O.S. §914) which became effective July 1, 2010.

The amendment to 590:10-9-2 permits a beneficiary to assign the death benefit to a funeral director or funeral business entity which provides funeral services for the member. This amendment is in accordance with Section 1 of Enrolled House Bill 3128 (amending 74 O.S. §916.1) which becomes effective November 1, 2010.

Rule 590:10-17-10 is added as a result of the Internal Revenue Service's approval of the Excess Benefit Plan and Trust. As a condition to obtain approval of the Excess Benefit Plan and Trust, the IRS required that any participating members in the Step-Up plan could not participate in the Excess Benefit Plan to the extent any excess benefit is attributable to the Step-Up election.

The new Subchapter 21 is necessary to implement the "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust." The Excess Benefit Plan and Trust was established by the Board of Trustees in August 2006 in accordance with 74 O.S. §915.1. Before the plan could be implemented, the Board was required to obtain approval under Section 915.1 from the Internal Revenue Service. The plan was recently approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010. The proposed emergency rules set forth the Excess Benefit Plan and Trust, its purpose and how it is to be implemented by the agency.

Specifically, 590:10-21-1 establishes the plan and its purpose. The new 590:10-21-2 sets forth defined terms. 590:10-21-3 provides how the plan is to be construed with regards to actuarial assumptions. 590:10-21-4 sets forth who must participate in the plan and when such participation begins. The new 590:10-21-5 sets forth the excess benefit amount, when such amount is paid, and the form of the benefit. 590:10-21-6 sets forth the process for determining the amount of contributions to the plan and that such contributions must be kept separate from the URSJJ plan. The new 590:10-21-7 establishes the Excess Benefit Trust Fund to hold and account for the separate excess benefit contributions. 590:10-21-8 sets forth the administrative authority and powers of the Board of Trustees over the plan. 590:10-21-9 permits the Board to amend the plan as may be necessary maintain the plan and its tax qualified status under the Internal Revenue Code. 590:10-21-10 provides that the interests of the participants in the plan are not assignable except as provided under 74 O.S. §923. 590:10-21-11 provides no guarantee of any particular tax treatment as a result of participation in the plan. 590:10-21-12 permits the Board to invest such assets of the plan pending payments under the plan. 590:10-21-13 sets forth procedures for resolving conflicts in the plan.

CONTACT PERSON:

Joseph A. Fox (405) 858-6737

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. CREDITED SERVICE

590:10-3-13. Credit for involuntary furlough

(a) **Office of Personnel Management approved furloughs.** A leave of absence as a result of an involuntary furlough established by the Office of Personnel Management under OPM Rule 530:10-15-48- *Involuntary leave without pay (furlough)*, or as it may be amended, may be credited as participating service. It is the responsibility of the employer to provide a copy of the furlough plan approved by the Administrator of the Office of Personnel Management, ~~a list of the affected employees and the dates, times and hours that each employee was placed on leave without pay.~~

(b) **District Attorneys Council approved furloughs.** The employees of a district attorney may receive participating service credit for a leave of absence due to an involuntary furlough after July 1, 2004, provided the furlough was conducted in substantial compliance with OPM Rule 530:10-15-48- *Involuntary leave without pay (furlough)*, or as it may be amended. It is the responsibility of the district attorney to provide a copy of the furlough plan approved by the District Attorneys Council, ~~a list of the affected employees and the dates, times and hours that each employee was placed on leave without pay.~~ The approved furlough plan must include a certification from the Council that the plan was in substantial compliance with the OPM rule.

(c) **Legislative or Supreme Court approved furloughs.** A leave of absence as a result of an involuntary furlough of legislative employees pursuant to a furlough plan adopted by the President Pro Tempore of the Senate or the Speaker of the House of Representatives as authorized by 74 O.S. §840-5.1, and involuntary furloughs of court employees authorized by the Oklahoma Supreme Court may be credited as participating service. It shall be the responsibility of the employer to provide a copy of the adopted furlough plan.

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-18. Post-retirement employment - eligibility

(a) **Retiree subject to restrictions.** Returning to work for a participating employer may affect the retirement benefit of a retiree. A retiree returning to work for a participating employer is subject to various state and federal restrictions, including, but not limited to, the requirements set forth in 74 O.S. ~~§ 914~~ §914 and certain Internal Revenue Service regulations.

(b) **Bona fide termination of employment.** Prior to the payment of any retirement benefit to a member, the participating employer shall certify in writing to the System that the member has terminated employment. Termination of employment shall be governed by guidelines and regulations set forth by the Internal Revenue Service, and shall generally mean the member must have experienced a bona fide separation, severance or termination of employment or service in which the employer and employee relationship is completely severed. Changing from full-time to part-time employment with the

same participating employer does not qualify as a bona fide termination.

(c) **Returning to work for former employer.** A retiree may not be rehired in any capacity by the retiree's same participating employer for a period of one (1) year after the ~~retiree's initial retirement from retiree ended his or her employment with~~ such same participating employer. A retiree may not enter into an employment contract of any kind, including through a third party, with the same participating employer for a period of one (1) year after ~~retiring from ending his or her employment with~~ such same participating employer. The provisions of this subsection shall not apply if the retiree waives his or her benefit as provided under 74 O.S. §914(E)(2).

(d) **Pre-arranged rehires.** If any agreement is made between the employee and the employer prior to the retirement of the employee which would allow the employee to return to work for the same participating employer, the retirement of such employee shall not be considered a bona fide termination of employment. Upon discovery of such an agreement, the employee shall be subject to having the retirement benefits stopped pursuant to 74 O.S. ~~§914(D)~~. §914(D).

(e) **Independent contractors.**

(1) A retired member who provides services as an independent contractor to a participating employer shall not participate in the System. However, the employer must submit a copy of the contract to OPERS for approval in advance of the effective date of the contract. The contract must be a true contract labor situation where the individual engages to perform certain services according to his or her own method and manner, free from control and direction of the employer in the performance of the service except the result thereof. Review of the contract shall include, but not be limited to:

- (A) the degree of the right to control or supervise the work of the individual;
- (B) payment of self-employment taxes;
- (C) whether any benefits or leave time are paid;
- (D) the nature and length of the contract;
- (E) whether the work is part of the regular business of the employer, and;
- (F) the right of either party to terminate the relationship without liability.

(2) If an individual after retirement is doing the same work for the same employer as the individual did prior to retirement, the System will consider the individual to be an employee and not an independent contractor. In no event will an employment contract be accepted by the System if it is determined that the contract was arranged or agreed prior to the retirement of the employee. In such cases, the System will consider the relationship to be that of employer and employee, and the employer and employee will be subject to the laws and rules regarding post-retirement employment.

SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES

590:10-9-2. Death benefit payment

(a) **Payment of benefit.** The four thousand dollars (\$4,000) death benefit, available for any retired member who died on or after July 20, 1987, shall be payable to the beneficiary listed by the member or to the member's estate. This beneficiary designation is not affected by any designation of joint-annuitant, deferred compensation beneficiary or insurance beneficiary, unless otherwise specifically designated in writing by member. For any retired member who died on or after July 1, 1999, the death benefit amount shall be five thousand dollars (\$5,000).

(b) **Assignment of benefit.** The beneficiary, or if none the member's estate or the heirs of the member in the case of a probate waiver, may assign the death benefit to a person licensed as a funeral director or to a lawfully recognized business entity licensed as required by law to provide funeral services for the deceased member.

SUBCHAPTER 17. STEP-UP ELECTION AND BENEFITS

590:10-17-10. Step-up benefits not eligible for Excess Benefit Plan

Participating members in the Step-Up shall not be permitted to participate in the Excess Benefit Plan as set forth in 590:10-21-1 et seq. adopted pursuant to 74 O.S. §915.1 and which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, to the extent any excess benefit, as defined in 590:10-21-2, is attributable to the Step-Up election.

SUBCHAPTER 21. EXCESS BENEFIT PLAN AND TRUST

590:10-21-1. Establishment and purpose

(a) **Establishment.** The "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code Section 415, 74 O.S. §915.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

(b) **Purpose.** The purpose of this Excess Benefit Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the System except for the limitations of Code Section 415(b). This Excess Benefit Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and shall be interpreted and construed consistently with such intent. This Excess Benefit Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a), and 457(f)(1) shall not apply to this Excess Benefit Plan.

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590:10-21-2. Definitions

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

"Administrator" means the System.

"Beneficiary" means any person named by a member to receive any benefits as provided by 74 O.S. §§901 et seq. If there is no beneficiary living at the time of member employee's death, the member's estate shall be the beneficiary.

"Board" means the Oklahoma Public Employees Retirement System Board of Trustees.

"Code" means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

"Excess Benefit" means the benefit determined in accordance with 590:10-21-5(a) and Section 4.01 of the Excess Benefit Plan document.

"Excess Benefit Fund" means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 74 O.S. §915.1, and as set forth in 590:10-21-7.

"Excess Benefit Plan" means the "Oklahoma Public Employees Retirement System Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 74 O.S. §915.1.

"OPERS Plan" refers to the retirement plan administered by the Oklahoma Public Employees Retirement System. The OPERS Plan document consists of the applicable Oklahoma statutes and rules and regulations.

"Participant" means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.

"Participating Employer" means an eligible employer who has agreed to make contributions to the System on behalf of its employees, provided such employer is the State, a political subdivision of the State, or an agency or instrumentality of the State. No employer which is not permitted to participate in a qualified governmental pension plan as defined in Code Section 414(d) shall be permitted to participate in the Excess Benefit Plan.

"Plan Year" means the calendar year for the purpose of this Excess Benefit Plan.

"Retiree" means a member who has retired under the System.

"Retirement Benefit" means a monthly income with benefits accruing from the first day of the month coinciding with installments by the Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to 74 O.S. §§901 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

"Retirement Fund" means the reserves of the System.

"State" means the State of Oklahoma.

"System" means the Oklahoma Public Employees Retirement System.

"Trustees" means the members of the Board.

590:10-21-3. Construction

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.

590:10-21-4. Participation

All Retirees and Beneficiaries of the System are required to participate in the Excess Benefit Plan if their Retirement Benefit from the System for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits. Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.

590:10-21-5. Payment of benefits

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the System that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). Provided, however, that the Excess Benefit Plan will not pay any Excess Benefit which results from the 2.5% step-up election pursuant to 74 O.S. §919.1(1)(e). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the System.

(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan.

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the System have been paid, and such Excess Benefit shall be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.

590:10-21-6. Contributions and funding

(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Participating

Employers, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for each Employer. The required contribution for all participating employers shall be the aggregate of the Excess Benefits payable to all Participants of all participating employers for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the System before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:10-21-7. Participating Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the OPERS Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.

590:10-21-7. Trust fund

(a) **Establishment of Excess Benefit Fund.** A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Participating Employers. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed accounting system for the Excess Benefit Fund, which shall allocate the expenses of the Excess Benefit Plan to the Excess Benefit Fund.

(b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).

(c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Participating Employers' obligations under the Excess Benefit Plan, including all amounts of Participating Employers' contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general,

unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employers and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.

(d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Participating Employers are the grantors, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.

(e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

590:10-21-8. Administration

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the OPERS Plan pursuant to 74 O.S. §§909, 909.1 and 909.2, unless modified by Code Section 415 and its implementing regulations, or 74 O.S. §915.1.

(b) **Powers of the Board.** The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board:

- (1) to establish procedures with respect to administration of the Excess Benefit Plan not inconsistent with the Excess Benefit Plan and the Code, and to amend or rescind such procedures;
- (2) to determine, consistent with the Excess Benefit Plan, the OPERS Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Excess Benefit Plan and eligibility for distribution of benefits from the Excess Benefit Plan, and the status of any person claiming benefits under the Excess Benefit Plan;
- (3) pursuant to Article IV of the Excess Benefit Plan, to make payments from the Excess Benefit Fund to Participants;
- (4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;
- (5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission

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or reconcile any inconsistency in the Excess Benefit Plan with respect to same.

(c) **Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.

(d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 74 O.S. §924.

590:10-21-9. Plan amendments

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Excess Benefit Plan as may be necessary to comply with Code Section 415(m) and to maintain the Excess Benefit Plan's or the System's qualified status under the Code.

590:10-21-10. Nonassignability and exemption from taxation and execution

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 74 O.S. §§923 and 924.

590:10-21-11. Federal and state taxes

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.

590:10-21-12. Investment

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.

590:10-21-13. Conflicts and limitation of rights

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess

Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:

(1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Participating Employers, or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;

(2) creating any responsibility or liability of the Participating Employers for the validity or effect of the Excess Benefit Plan;

(3) a contract between the Participating Employers and any Participant or other person; or

(4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employers or any Participant or other person to continue or terminate the employment relationship at any time.

[OAR Docket #10-1210; filed 9-30-10]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

[OAR Docket #10-1211]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Excess Benefit Plan and Trust [NEW]

590:15-5-1. Establishment and purpose [NEW]

590:15-5-2. Definitions [NEW]

590:15-5-3. Construction [NEW]

590:15-5-4. Participation [NEW]

590:15-5-5. Payment of benefits [NEW]

590:15-5-6. Contributions and funding [NEW]

590:15-5-7. Trust fund [NEW]

590:15-5-8. Administration [NEW]

590:15-5-9. Plan amendments [NEW]

590:15-5-10. Nonassignability and exemption from taxation and execution [NEW]

590:15-5-11. Federal and state taxes [NEW]

590:15-5-12. Investment [NEW]

590:15-5-13. Conflicts and limitation of rights [NEW]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees, pursuant to 20 O.S. §§1104.1, 1108

DATES:

Public Hearing:

August 19, 2010

Adoption:

August 19, 2010

Approved by Governor:

September 17, 2010

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2011, unless superseded by another rule or disapproved by the legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Agency finds 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, amendment, revision, or revocation of an existing rule. These emergency rules are necessary to implement the qualified governmental excess benefit arrangement which was approved by the Internal Revenue Service on June 24, 2010, as required by 20 O.S. §1104.1. IRS approval was necessary for the System to maintain its plan qualification under the Internal Revenue Code.

ANALYSIS:

The new Subchapter 5 is necessary to implement the "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust." The Excess Benefit Plan and Trust was established by the Board of Trustees in August 2006 in accordance with 20 O.S. §1104.1. Before the plan could be implemented, the Board was required to obtain approval under Section 1104.1 from the Internal Revenue Service. The plan was recently approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010. The emergency rules are necessary to help the retirement plan maintain its plan qualification under the Internal Revenue Code. The proposed emergency rules set forth the Excess Benefit Plan and Trust, its purpose and how it is to be implemented by the agency.

Specifically, 590:15-5-1 establishes the plan and its purpose. The new 590:15-5-2 sets forth defined terms. 590:15-5-3 provides how the plan is to be construed with regards to actuarial assumptions. 590:15-5-4 sets forth who must participate in the plan and when such participation begins. The new 590:15-5-5 sets forth the excess benefit amount, when such amount is paid, and the form of the benefit. 590:15-5-6 sets forth the process for determining the amount of contributions to the plan and that such contributions must be kept separate from the URSJJ plan. The new 590:15-5-7 establishes the Excess Benefit Trust Fund to hold and account for the separate excess benefit contributions. 590:15-5-8 sets forth the administrative authority and powers of the Board of Trustees over the plan. 590:15-5-9 permits the Board to amend the plan as may be necessary to maintain the plan and its tax qualified status under the Internal Revenue Code. 590:15-5-10 provides that the interests of the participants in the plan are not assignable except as provided under 20 O.S. §1111. 590:15-5-11 provides no guarantee of any particular tax treatment as a result of participation in the plan. 590:15-5-12 permits the Board to invest such assets of the plan pending payments under the plan. 590:15-5-13 sets forth procedures for resolving conflicts in the plan.

CONTACT PERSON:

Joseph A. Fox (405) 858-6737

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

SUBCHAPTER 5. EXCESS BENEFIT PLAN AND TRUST

590:15-5-1. Establishment and purpose

(a) Establishment. The "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" is hereby established effective as of November 1, 2010, pursuant to Code

Section 415, 20 O.S. §1104.1, and the Excess Benefit Plan and Trust document which was approved by the Internal Revenue Service in a private letter ruling dated June 24, 2010, and as adopted by the Board of Trustees.

(b) Purpose. The purpose of this Excess Benefit Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the System except for the limitations of Code Section 415(b). This Excess Benefit Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and shall be interpreted and construed consistently with such intent. This Excess Benefit Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a), and 457(f)(1) shall not apply to this Excess Benefit Plan.

590:15-5-2. Definitions

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

"Administrator" means the Oklahoma Public Employees Retirement System.

"Beneficiary" means any person named by a member to receive any benefits as provided by 20 O.S. §§1101 et seq. If there is no beneficiary living at time of member employee's death, the member's estate shall be the beneficiary.

"Board" means the Oklahoma Public Employees Retirement System Board of Trustees.

"Code" means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

"Employer" means the State of Oklahoma, which has agreed to make contributions to the URSJJ Plan on behalf of its employees.

"Excess Benefit" means the benefit determined in accordance with 590:15-5-5(a) and Section 4.01 of the Excess Benefit Plan document.

"Excess Benefit Fund" means the trust fund established by the Board pursuant to Article VI of the Excess Benefit Plan document, pursuant to the provisions of 20 O.S. §1104.1, and as set forth in 590:15-5-7.

"Excess Benefit Plan" means the "Uniform Retirement System for Justices and Judges Excess Benefit Plan and Trust" established pursuant to Code Section 415 and 20 O.S. §1104.1.

"Participant" means a Retiree or Beneficiary who is entitled to benefits under the Excess Benefit Plan.

"Plan Year" means the calendar year for the purpose of this Excess Benefit Plan.

"Retiree" means a member who has retired under the URSJJ Plan.

"Retirement Benefit" means a monthly income with benefits accruing from the first day of the month coinciding with installments by the URSJJ Plan, whether payable for a temporary period or following retirement and ending on the last day of the month in which death occurs throughout the future life of a Retired Member or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to 20 O.S.

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§§1101 et seq. or as otherwise allowed to be paid at the discretion of the Board, without regard to any limitations on such retirement income or benefit under Code Section 415(b).

"Retirement Fund" means the reserves of the URSJJ Plan.

"State" means the State of Oklahoma.

"Trustees" means the members of the Board.

"URSJJ Plan" means the retirement plan administered by the Oklahoma Public Employees Retirement System. The URSJJ Plan document consists of the applicable Oklahoma statutes and rules and regulations.

590:15-5-3. Construction

Whenever any actuarial present value or actuarial equivalency is to be determined under the Excess Benefit Plan to establish a benefit, it shall be based on such reasonable actuarial assumptions as may be approved in the sole discretion of the Board, and shall be determined in a uniform manner for all similarly situated Participants.

590:15-5-4. Participation

All Retirees and Beneficiaries of the URSJJ Plan are required to participate in the Excess Benefit Plan if their Retirement Benefit from the URSJJ Plan for a Plan Year is limited during the applicable Calendar Year by Code Section 415(b). The Board shall determine for each Plan Year which Retirees and Beneficiaries are required to participate in the Excess Benefit Plan. Participation in the Excess Benefit Plan shall commence each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year as determined by the Calendar Year Code Section 415 limits. Participation in the Excess Benefit Plan shall cease for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or if all benefit obligations under the Excess Benefit Plan to the Retiree or Beneficiary have been satisfied.

590:15-5-5. Payment of benefits

(a) **Benefit amount.** A Participant in the Excess Benefit Plan shall receive a benefit in an amount equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant by the URSJJ Plan that could not be paid because of the application of the limitations on such Retirement Benefit under Code Section 415(b). An Excess Benefit under the Excess Benefit Plan shall be paid only if and to the extent the Participant is receiving a Retirement Benefit from the URSJJ Plan.

(b) **No election to defer.** No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan.

(c) **Time for Payment.** Each Plan Year, the Excess Benefit to which a Participant is entitled under the Excess Benefit Plan shall be paid from the Excess Benefit Fund commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code Section 415(b)) under the URSJJ Plan have been paid, and such Excess Benefit shall

be paid from that month to the end of the Calendar Year falling within the applicable Plan Year.

(d) **Form of Benefit.** The form of the Excess Benefit shall be the same form as the Participant's Retirement Benefit.

590:15-5-6. Contributions and funding

(a) **Funding.** The Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein. The Excess Benefit Plan constitutes a mere unsecured promise by the Employer, on whose behalf the Retirement Benefit and Excess Benefits are paid to the Participant, to make benefit payments in the future.

(b) **Contributions.** The Administrator shall determine the amount necessary to pay the Excess Benefit under the Excess Benefit Plan for each Plan Year for the Employer. The required contribution for the Employer shall be the aggregate of the Excess Benefits payable to all Participants of the Employer for such Plan Year plus an amount determined by the Board to be a necessary and reasonable expense of administering the Excess Benefit Plan. The amount determined to be necessary to pay the Excess Benefit of a Participant and administrative expenses of the Excess Benefit Plan shall be withheld from contributions to the URSJJ Plan before being credited to the Retirement Fund and deposited into the Excess Benefit Fund established under Article VI of the Excess Benefit Plan document and 590:15-5-7. Employer contributions shall be made at a time or times determined by the Board, but shall be made no less frequently than annually. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Excess Benefit Fund, shall be first used to pay the administrative expenses of the Excess Benefit Plan, then shall be deposited to the Excess Benefit Fund and used to fund Excess Benefits of Participants in future Plan Years.

(c) **Contributions not to be credited to OPERS Plan.** Under no circumstances will Employer contributions to fund the Excess Benefits under the Plan be credited to the URSJJ Plan. The amounts determined to be necessary to provide the Excess Benefit under the Excess Benefit Plan for each Participant shall be accounted for separately. However, such separate accounting shall not be deemed to set aside such amounts for the benefit of a Participant. Benefits under the Excess Benefit Plan shall be paid from the Excess Benefit Fund.

590:15-5-7. Trust fund

(a) **Establishment of Excess Benefit Fund.** A trust fund, referred to as the Excess Benefit Fund, is established as a valid trust under the law of the State, which is separate from the Retirement Fund, to hold contributions of the Employer. Contributions to the Excess Benefit Fund shall be held separate and apart from the funds comprising the Retirement Fund and shall not be commingled with assets thereof. The Board shall prescribe a detailed accounting system for the Excess Benefit Fund, which shall allocate the expenses of the Excess Benefit Plan to the Excess Benefit Fund.

(b) **Excess Benefit Fund Purpose.** The Excess Benefit Fund is maintained solely for the purpose of providing Excess Benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).

(c) **Excess Benefit Fund Assets.** All assets held by such Excess Benefit Fund to assist in meeting the Employer's obligations under the Excess Benefit Plan, including all amounts of Employer's contributions made pursuant to the Excess Benefit Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, shall be, and remain, the general, unpledged, unrestricted assets of the Excess Benefit Fund. The Excess Benefit Fund shall be held separate and apart from other funds of the Employer and shall be used exclusively for the uses and purposes of Participants and general creditors as set forth herein. Participants shall have no preferred claim on, or any beneficial interest in, any assets of the Excess Benefit Fund. Any assets held by the Excess Benefit Fund shall be subject to the claims of the contributing Employer's general creditors under federal and state law in the event of insolvency, to the extent of the affected Employer's undistributed contributions, if any.

(d) **Grantor Trust.** The Excess Benefit Fund is intended to be a grantor trust, of which the contributing Employer is the grantor, within the meaning of Code Sections 671 through 679 and shall be construed accordingly. This provision shall not be construed to create an irrevocable trust of any kind.

(e) **Excess Benefit Fund Income.** Income accruing to the Excess Benefit Fund in respect of the Excess Benefit Plan shall constitute income derived from the exercise of an essential governmental function upon which the Excess Benefit Fund shall be exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

590:15-5-8. Administration

(a) **Administrative Authority.** The Board shall have the authority to control and manage the operation and administration of the Excess Benefit Plan. The Board and the Administrator shall have the same rights, duties and responsibilities respecting the Excess Benefit Plan as the Board and the Administrator have with respect to the URSJJ Plan pursuant to 20 O.S. §1108, unless modified by Code Section 415 and its implementing regulations, or 20 O.S. §1104.1.

(b) **Powers of the Board.** The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board:

(1) to establish procedures with respect to administration of the Excess Benefit Plan not inconsistent with the Excess Benefit Plan and the Code, and to amend or rescind such procedures;

(2) to determine, consistent with the Excess Benefit Plan, the URSJJ Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Excess Benefit Plan and eligibility for distribution of benefits from the Excess Benefit Plan, and the status of any person claiming benefits under the Excess Benefit Plan;

(3) pursuant to Article IV of the Excess Benefit Plan document, to make payments from the Excess Benefit Fund to Participants;

(4) to contract with a third party to perform designated administrative services under this Excess Benefit Plan;

(5) subject to and consistent with the Code, to construe and interpret the Excess Benefit Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Excess Benefit Plan with respect to same.

(c) **Action by the Board.** Any action by the Board that is supported by competent, material, and substantial evidence and that is not found to be an abuse of discretion shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board shall be the sole and final judge of such expediency.

(d) **Payment of benefits and erroneous payments.** The Board, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the Participant to receive the payment. Any benefit payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made may be recovered as provided in 20 O.S. §1111.

590:15-5-9. Plan amendments

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Excess Benefit Plan as may be necessary to comply with Code Section 415(m) and to maintain the Excess Benefit Plan's or the System's qualified status under the Code.

590:15-5-10. Nonassignability and exemption from taxation and execution

The interests of Participants under this Excess Benefit Plan are hereby exempt from any state, county, municipal or local tax, and shall not be subject to execution, garnishment, attachment, or any other process of law whatsoever, and shall be unassignable, to the extent and except as otherwise provided by 20 O.S. §1111.

590:15-5-11. Federal and state taxes

The Board, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Excess Benefit Plan.

590:15-5-12. Investment

The Board may hold such portion of the Excess Benefit Plan uninvested as the Board deems advisable for making distributions under the Excess Benefit Plan, or may invest assets of the Excess Benefit Plan pending the Excess Benefit payments. The Board shall not purchase an annuity contract with the assets of the Excess Benefit Fund.

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590:15-5-13. Conflicts and limitation of rights

(a) **Conflicts.** In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that (i) causes the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Excess Benefit Plan to comply with all applicable requirements of the Code, and (iii) causes the Excess Benefit Plan to comply with the System Plan and all applicable Oklahoma statutes and rules, shall prevail over any different interpretation.

(b) **Limitation of rights.** Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof nor any act or omission under the Excess Benefit Plan (or resulting from the operation of the Excess Benefit Plan) shall be construed as:

(1) conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employer or Administrator, if any, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;

(2) creating any responsibility or liability of the Employer for the validity or effect of the Excess Benefit Plan;

(3) a contract between the Employer and any Participant or other person; or

(4) being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time.

[OAR Docket #10-1211; filed 9-30-10]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #10-1213]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 21. Use Tax
710:65-21-8 [NEW]

AUTHORITY:

68 O.S. §§ 203, 1406.1, 1407.2 and 1407.4; Oklahoma Tax Commission

DATES:

Adoption:

August 26, 2010 (Commission Order No. 2010-08-26-02)

Approved by Governor:

September 17, 2010

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2011, 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 implement the provisions of House Bill 2359 (52nd Legislature, 2nd Regular Session).

ANALYSIS:

The rule changes reflect the provisions of House Bill 2359 (52nd Legislature, 2nd Regular Session) regarding notice requirements for certain out-of-state retailers or vendors not registered in Oklahoma

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 21. USE TAX

710:65-21-8. Out-of-state retailers or vendors not registered in Oklahoma

(a) **Definitions.** For the purposes of this Section:

(1) **"Non-collecting retailer"** means a retailer, not currently registered to collect and remit Oklahoma sales and use tax, who makes sales of tangible personal property from a place of business outside of Oklahoma to be shipped to Oklahoma for use and who is not required to collect Oklahoma sales or use taxes.

(2) **"Oklahoma purchaser"** means a purchaser that requests goods be shipped to Oklahoma.

(3) **"Online auction website"** means a collection of web pages on the Internet that allows persons to display tangible personal property for sale which is purchased through a competitive process where participants place bids with the highest bidder purchasing the item when the bidding period ends.

(4) **"De minimis retailer"** means any non-collecting retailer that made total gross sales in Oklahoma in the prior year of less than \$100,000.00 and reasonably expects Oklahoma sales in the current year will be less than \$100,000.00.

(5) **"De minimis online auction website"** means any online auction website that facilitates total gross sales in Oklahoma in the prior year of less than \$100,000.00 and reasonably expects Oklahoma sales in the current year will be less than \$100,000.00.

(b) **Requirements for notice.** Effective October 1, 2010, every non-collecting retailer must give notice that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser.

(1) **Notice contents.** The notice must be readily visible and contain the information set forth as follows:

(A) The non-collecting retailer is not required, and does not collect Oklahoma sales or use tax;

(B) The purchase is subject to Oklahoma use tax unless it is specifically exempt from taxation;

(C) The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means;

(D) The State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed and pay tax on those purchases. The tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return. [Form 21-1]; and

(E) The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, www.tax.ok.gov.

(2) **Website and/or catalog notice.** Notice on a website shall occur on a page necessary to facilitate the applicable transaction. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. Notice in a catalog shall be part of the order form. It shall be sufficient if the non-collecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma on page _____", if such page includes the principal notice required by this Section.

(3) **Invoice notice.** For internet purchases, the invoice notice must occur on the electronic order confirmation. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. If the non-collecting retailer does not issue an electronic order confirmation, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement. For catalog purchases, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) **Exceptions.**

(A) For internet purchases, notice on the check-out page fulfills both the website and invoice notice requirements simultaneously. It shall be sufficient if

the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section.

(B) If a retailer is required to provide a similar notice for another state in addition to Oklahoma, the retailer may provide a consolidated notice so long as such notice includes the information contained in (b) of this Section, specifically references Oklahoma and meets the placement requirements of this Section.

(c) **Prohibition from advertising no tax due.** A non-collecting retailer may not state or display or imply that no tax is due on any Oklahoma purchase unless such display is accompanied by the notice required by (b) of this Section each time the display appears.

(1) For example, a summary of the transaction including a line designated "sales tax" and showing the amount of sales tax as "zero" or "0.00" would constitute a "display" implying that no tax is due on the purchase. Such a display must be accompanied by the notice required by (b) of this Section every time it appears.

(2) Notwithstanding the limitation in this subsection, if a non-collecting retailer knows that a purchase is exempt from Oklahoma tax pursuant to Oklahoma law, the non-collecting retailer may display or indicate that no sales tax is due even if such display is not accompanied by the notice required by (b) of this Section.

(d) **Invoice notification exception for online auction websites.** With the exception of notification on invoices, the provisions of this Section shall apply to online auction websites as defined in (a) of this Section.

(e) **De minimis exception.** A de minimis retailer and a de minimis online auction website, as defined in (a) of this Section, shall be exempt from the notice requirements in (b) of this Section.

[OAR Docket #10-1213; filed 10-4-10]

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

1:2010-44.

EXECUTIVE ORDER 2010-44

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. until 5:00 p.m. on Monday, September 27, 2010, who died on Wednesday, September 22, 2010, at age 85.

Representative Duckett served in the Oklahoma State House of Representative from 1973 until 1987. Representative Duckett was a dedicated public servant and a faithful representative to his constituents. Throughout his life, Representative Duckett 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 24th day of September, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

BRAD HENRY

ATTEST:

[OAR Docket #10-1215; filed 10-5-10]

