

1 the NAICS Manual under U.S. Industry Nos. 221111
2 through 221122, if:

3 (a) an establishment engaged therein qualifies
4 as an exempt wholesale generator as defined
5 by 15 U.S.C., Section 79z-5a,

6 (b) the exempt wholesale generator facility
7 consumes from sources located within the
8 state at least ninety percent (90%) of the
9 total energy used to produce the electrical
10 output which qualifies for the specialized
11 treatment provided by the Energy Policy Act
12 of 1992, P.L. 102-486, 106 Stat. 2776, as
13 amended, and federal regulations adopted
14 pursuant thereto,

15 (c) the exempt wholesale generator facility
16 sells to purchasers located outside the
17 state for consumption in activities located
18 outside the state at least ninety percent
19 (90%) of the total electrical energy output
20 which qualifies for the specialized
21 treatment provided by the Energy Policy Act
22 of 1992, P.L. 102-486, 106 Stat. 2776, as
23 amended, and federal regulations adopted
24 pursuant thereto, and

1 (d) the facility is constructed on or after July
2 1, 1996,

3 (3) those administrative and facilities support
4 service activities defined or classified in the
5 NAICS Manual under Industry Group Nos. 5611 and
6 5612, Industry Nos. 51821, 519130, 52232, and
7 56142 ~~and 54191~~ or U.S. Industry Nos. 524291 and
8 551114, those other support activities for air
9 transportation defined or classified in the NAICS
10 Manual under Industry Group No. 488190, and those
11 support, repair, and maintenance service
12 activities for the wind industry defined or
13 classified in the NAICS Manual under Industry
14 Group No. 811310,

15 (4) those professional, scientific and technical
16 service activities defined or classified in the
17 NAICS Manual under U.S. Industry Nos. 541710 and
18 541380,

19 (5) distribution centers for retail or wholesale
20 businesses defined or classified in the NAICS
21 Manual under Sector No. 42, if forty percent
22 (40%) or more of the inventory processed through
23 such warehouse is shipped out-of-state,
24

1 (6) those adjustment and collection service
2 activities defined or classified in the NAICS
3 Manual under U.S. Industry No. 561440, if
4 seventy-five percent (75%) of the loans to be
5 serviced were made by out-of-state debtors,

6 (7) (a) those air transportation activities defined
7 or classified in the NAICS Manual under
8 Industry Group No. 4811, if the following
9 facilities are located in this state:

10 (i) the corporate headquarters of an
11 establishment classified therein, and

12 (ii) a facility or facilities at which
13 reservations for transportation
14 provided by such an establishment are
15 processed, whether such services are
16 performed by employees of the
17 establishment, by employees of a
18 subsidiary of or other entity
19 affiliated with the establishment or by
20 employees of an entity with whom the
21 establishment has contracted for the
22 performance of such services; provided,
23 this provision shall not disqualify an
24 establishment which uses an out-of-

1 state entity or employees for some
2 reservations services, or

3 (b) those air transportation activities defined
4 or classified in the NAICS Manual under
5 Industry Group No. 4811, if an establishment
6 classified therein has or will have within
7 one (1) year sales of at least seventy-five
8 percent (75%) of its total sales, as
9 determined by the Incentive Approval
10 Committee pursuant to the provisions of
11 subsection B of this section, to out-of-
12 state customers or buyers, to in-state
13 customers or buyers if the product or
14 service is resold by the purchaser to an
15 out-of-state customer or buyer for ultimate
16 use, or to the federal government,

17 (8) flight training services activities defined or
18 classified in the NAICS Manual under U.S.
19 Industry Group No. 611512, which for purposes of
20 Section 3601 et seq. of this title shall include
21 new direct jobs for which gross payroll existed
22 on or after January 1, 2003, as identified in the
23 NAICS Manual,

24

1 (9) the following, if an establishment classified
2 therein has or will have within one (1) year
3 sales of at least seventy-five percent (75%) of
4 its total sales, as determined by the Incentive
5 Approval Committee pursuant to the provisions of
6 subsection B of this section, to out-of-state
7 customers or buyers, to in-state customers or
8 buyers if the product or service is resold by the
9 purchaser to an out-of-state customer or buyer
10 for ultimate use, or to the federal government:

11 (a) those transportation and warehousing
12 activities defined or classified in the
13 NAICS Manual under Industry Subsector No.
14 493, if not otherwise listed in this
15 paragraph, Industry Subsector No. 484 and
16 Industry Group Nos. 4884 through 4889,

17 (b) those passenger transportation activities
18 defined or classified in the NAICS Manual
19 under Industry Nos. 561510, ~~561520~~ and
20 561599,

21 (c) those freight or cargo transportation
22 activities defined or classified in the
23 NAICS Manual under Industry No. 541614,
24

1 (d) those insurance activities defined or
2 classified in the NAICS Manual under
3 Industry Group No. 5241,

4 ~~(e) those mailing, reproduction, commercial art~~
5 ~~and photography and stenographic service~~
6 ~~activities defined or classified in the~~
7 ~~NAICS Manual under U.S. Industry Nos.~~
8 ~~541430, 541860, 541922, 561439 and 561492,~~

9 ~~(f)~~ those services to dwellings and other
10 buildings, as defined or classified in the
11 NAICS Manual under Industry Group No. 5617,
12 excluding U.S. Industry ~~No.~~ Nos. 561730,
13 56171, 56172, 56174, and 56179,

14 ~~(g)~~

15 (f) those equipment rental and leasing
16 activities defined or classified in the
17 NAICS Manual under Industry Group ~~Nos.~~ 5323
18 ~~and No.~~ 5324,

19 ~~(h)~~ ~~those employment services defined or~~
20 ~~classified in the NAICS Manual under~~
21 ~~Industry Group No. 5613,~~

22 ~~(i)~~

23 (g) those information technology and other
24 computer-related service activities defined

1 or classified in the NAICS Manual under
2 Industry Group Nos. 5112, 5182, 5191 and
3 5415,

4 ~~(j)~~

5 (h) those business support service activities
6 defined or classified in the NAICS Manual
7 under U.S. Industry Nos. 561410 through
8 ~~561439~~ 561430, ~~Industry Group No. 5616~~
9 excluding 56143, and Industry No. 51911,

10 ~~(k)~~

11 (i) those medical and diagnostic laboratory
12 activities defined or classified in the
13 NAICS Manual under Industry Group No. 6215,

14 ~~(l)~~

15 (j) those professional, scientific and technical
16 service activities defined or classified in
17 the NAICS Manual under Industry Group Nos.
18 5412, 5414, 5415, 5416 and 5417, Industry
19 Nos. 54131, 54133, 54136, and 54137 ~~and~~
20 ~~54182~~, and U.S. Industry No. 541990, if not
21 otherwise listed in this paragraph,

22 ~~(m)~~

1 (k) those communication service activities
2 defined or classified in the NAICS Manual
3 under Industry Nos. 51741 and 51791,

4 ~~(n)~~

5 (l) those refuse systems activities defined or
6 classified in the NAICS Manual under
7 Industry Group No. 5622, provided that the
8 establishment is primarily engaged in the
9 capture and distribution of methane gas
10 produced within a landfill,

11 ~~(o)~~

12 (m) general wholesale distribution of groceries,
13 defined or classified in the NAICS Manual
14 under Industry Group Nos. 4244 and 4245,

15 ~~(p)~~

16 (n) those activities relating to processing of
17 insurance claims, defined or classified in
18 the NAICS Manual under U.S. Industry Nos.
19 524210 and 524292; provided, activities
20 described in U.S. Industry Nos. 524210 and
21 524292 in the NAICS Manual other than
22 processing of insurance claims shall not be
23 included for purposes of this subdivision,

24 ~~(q)~~

1 (o) those agricultural activities classified in
2 the NAICS Manual under U.S. Industry ~~Nos.~~
3 No. 112120 ~~and 112310,~~

4 ~~(r)~~

5 (p) those professional organization activities
6 classified in the NAICS Manual under U.S.
7 Industry No. 813920,

8 ~~(s)~~

9 (q) alternative energy structure construction
10 classified in the NAICS Manual under U.S.
11 Industry No. 237130,

12 ~~(t)~~

13 (r) solar reflective coating application
14 classified in the NAICS Manual under U.S.
15 Industry No. 238160, and

16 ~~(u)~~

17 (s) solar heating equipment installation
18 classified in the NAICS Manual under U.S.
19 Industry No. 238220;

20 (10) those activities related to extraction of crude
21 petroleum and natural gas defined or classified
22 in the NAICS Manual under Industry Group No.
23 2111, subject to the limitations provided in
24

1 paragraph 3 of this subsection and paragraph 3 of
2 subsection B of this section,

3 (11) those activities performed by the federal
4 civilian workforce at a facility of the Federal
5 Aviation Administration located in this state if
6 the Director of the Department of Commerce
7 determines or is notified that the federal
8 government is soliciting proposals or otherwise
9 inviting states to compete for additional federal
10 civilian employment or expansion of federal
11 civilian employment at such facilities,

12 (12) those activities defined or classified in the
13 NAICS Manual under U.S. Industry No. 711211 (2007
14 version),

15 (13) those real estate or brokerage activities
16 classified in the NAICS Manual under U.S.
17 Industry No. 53120 for which at least seventy-
18 five percent (75%) of the establishment's
19 revenues are attributed to out-of-state sales and
20 at least seventy-five percent (75%) of the real
21 estate transactions generating those revenues are
22 attributed to real property located outside the
23 State of Oklahoma, or

24

1 (14) those support activities for rail transportation
2 and those support activities for water
3 transportation defined or classified in the NAICS
4 Manual under U.S. Industry Nos. 4882 and 4883.

5 b. An establishment described in subparagraph a of this
6 paragraph shall not be considered to be engaged in a
7 basic industry unless it offers, or will offer within
8 one hundred eighty (180) days of employment, a basic
9 health benefits plan to the individuals it employs in
10 new direct jobs in this state which is determined by
11 the Oklahoma Department of Commerce to consist of the
12 following elements or elements substantially
13 equivalent thereto:

- 14 (1) not more than fifty percent (50%) of the premium
15 shall be paid by the employee,
16 (2) coverage for basic hospital care,
17 (3) coverage for physician care,
18 (4) coverage for mental health care,
19 (5) coverage for substance abuse treatment,
20 (6) coverage for prescription drugs, and
21 (7) coverage for prenatal care;

22 2. "Change in control event" means the transfer to one or more
23 unrelated establishments or unrelated persons, of either:
24

- 1 a. beneficial ownership of more than fifty percent (50%)
2 in value and more than fifty percent (50%) in voting
3 power of the outstanding equity securities of the
4 transferred establishment, or
- 5 b. more than fifty percent (50%) in value of the assets
6 of an establishment.

7 A transferor shall be treated as related to a transferee if more
8 than fifty percent (50%) of the voting interests of the transferor
9 and transferee are owned, directly or indirectly, by the other or
10 are owned, directly or indirectly, by the same person or persons,
11 unless such transferred establishment has an outstanding class of
12 equity securities registered under Sections 12(b) or 15(d) of the
13 Securities Exchange Act of 1934, as amended, in which event the
14 transferor and transferee will be treated as unrelated; provided, an
15 establishment applying for the Oklahoma Quality Jobs Program Act as
16 a result of a change of control event is required to apply within
17 one hundred eighty (180) days of the change in control event to
18 qualify for consideration. An establishment entering the Oklahoma
19 Quality Jobs Program Act as the result of a change of control event
20 shall be required to maintain a level of new direct jobs as agreed
21 to in its contract with the Department of Commerce and to pay new
22 direct jobs an average annualized wage which equals or exceeds one
23 hundred twenty-five percent (125%) of the average county wage as
24 that percentage is determined by the Oklahoma State Data Center

1 based upon the most recent U.S. Department of Commerce data for the
2 county in which the new jobs are located. For purposes of this
3 paragraph, healthcare premiums paid by the applicant for individuals
4 in new direct jobs shall not be included in the annualized wage.
5 Such establishment entering the Quality Jobs Program Act as the
6 result of a change of control event shall be required to retain the
7 contracted average annualized wage and maintain the contracted
8 maintenance level of new direct jobs numbers as certified by the Tax
9 Commission. If the required average annualized wage or the required
10 new direct jobs numbers do not equal or exceed such contracted level
11 during any quarter, the quarterly incentive payments shall not be
12 made and shall not be resumed until such time as such requirements
13 are met. An establishment described in this paragraph shall be
14 required to repay all incentive payments received under the Quality
15 Jobs Program Act if the establishment is determined by the Oklahoma
16 Tax Commission to no longer have business operations in the state
17 within three (3) years from the beginning of the calendar quarter
18 for which the first incentive payment claim is filed.

19 3. "New direct job":

- 20 a. means full-time-equivalent employment in this state in
21 an establishment which has qualified to receive an
22 incentive payment pursuant to the provisions of
23 Section 3601 et seq. of this title which employment
24 did not exist in this state prior to the date of

1 approval by the Department of the application of the
2 establishment pursuant to the provisions of Section
3 3604 of this title and with respect to an
4 establishment qualifying for incentive payments
5 pursuant to division (12) of subparagraph a of
6 paragraph 1 of this subsection shall not include
7 compensation paid to an employee or independent
8 contractor for an athletic contest conducted in the
9 state if the compensation is paid by an entity that
10 does not have its principal place of business in the
11 state or that does not own real or personal property
12 having a market value of at least One Million Dollars
13 (\$1,000,000.00) located in the state, and the
14 employees or independent contractors of such entity
15 are compensated to compete against the employees or
16 independent contractors of an establishment that
17 qualifies for incentive payments pursuant to division
18 (12) of subparagraph a of paragraph 1 of this
19 subsection and which is organized under Oklahoma law
20 or that is lawfully registered to do business in the
21 state and which does have its principal place of
22 business located in the state and owns real or
23 personal property having a market value of at least
24 One Million Dollars (\$1,000,000.00) located in the

1 state; provided, that if an application of an
2 establishment is approved by the Department of
3 Commerce after a change in control event and the
4 Director of the Department of Commerce determines that
5 the jobs located at such establishment are likely to
6 leave the state, "new direct job" shall include
7 employment that existed in this state prior to the
8 date of application which is retained in this state by
9 the new establishment following a change in control
10 event, if such job otherwise qualifies as a new direct
11 job, and

12 b. shall include full-time-equivalent employment in this
13 state of employees who are employed by an employment
14 agency or similar entity other than the establishment
15 which has qualified to receive an incentive payment
16 and who are leased or otherwise provided under
17 contract to the qualified establishment, if such job
18 did not exist in this state prior to the date of
19 approval by the Department of the application of the
20 establishment or the job otherwise qualifies as a new
21 direct job following a change in control event. A job
22 shall be deemed to exist in this state prior to
23 approval of an application if the activities and
24 functions for which the particular job exists have

1 been ongoing at any time within six (6) months prior
2 to such approval. With respect to establishments
3 defined in division (10) of subparagraph a of
4 paragraph 1 of this subsection, new direct jobs shall
5 be limited to those jobs directly comprising the
6 corporate headquarters of or directly relating to
7 administrative, financial, engineering, surveying,
8 geological or geophysical services performed by the
9 establishment. Under no circumstances shall
10 employment relating to drilling or field services be
11 considered new direct jobs;

12 4. "Estimated direct state benefits" means the tax revenues
13 projected by the Department to accrue to the state as a result of
14 new direct jobs;

15 5. "Estimated direct state costs" means the costs projected by
16 the Department to accrue to the state as a result of new direct
17 jobs. Such costs shall include, but not be limited to:

- 18 a. the costs of education of new state resident children,
- 19 b. the costs of public health, public safety and
20 transportation services to be provided to new state
21 residents,
- 22 c. the costs of other state services to be provided to
23 new state residents, and
- 24 d. the costs of other state services;

1 6. "Estimated net direct state benefits" means the estimated
2 direct state benefits less the estimated direct state costs;

3 7. "Net benefit rate" means the estimated net direct state
4 benefits computed as a percentage of gross payroll; provided:

5 a. except as otherwise provided in this paragraph, the
6 net benefit rate may be variable and shall not exceed
7 five percent (5%),

8 b. the net benefit rate shall not exceed six percent (6%)
9 in connection with an establishment which is owned and
10 operated by an entity which has been awarded a United
11 States Department of Defense contract for which:

12 (1) bids were solicited and accepted by the United
13 States Department of Defense from facilities
14 located outside this state,

15 (2) the term is or is renewable for not less than
16 twenty (20) years, and

17 (3) the average annual salary, excluding benefits
18 which are not subject to Oklahoma income taxes,
19 for new direct jobs created as a direct result of
20 the awarding of the contract is projected by the
21 Department of Commerce to equal or exceed Forty
22 Thousand Dollars (\$40,000.00) within three (3)
23 years of the date of the first incentive payment,
24

1 c. except as otherwise provided in subparagraph d of this
2 paragraph, in no event shall incentive payments,
3 cumulatively, exceed the estimated net direct state
4 benefits,

5 d. the net benefit rate shall be five percent (5%) for an
6 establishment locating:

7 (1) in an opportunity zone located in a high-
8 employment county, as such terms are defined in
9 subsection G of Section 3604 of this title, or

10 (2) in a county in which:

11 (a) the per capita personal income, as
12 determined by the Department, is eighty-five
13 percent (85%) or less of the statewide
14 average per capita personal income,

15 (b) the population has decreased over the
16 previous ten (10) years, as determined by
17 the State Data Center based on the most
18 recent U.S. Department of Commerce data, or

19 (c) the unemployment rate exceeds the lesser of
20 five percent (5%) or two percentage points
21 above the state average unemployment rate as
22 certified by the Oklahoma Employment
23 Security Commission,
24

1 e. the net benefit rate shall not exceed six percent (6%)
2 in connection with an establishment which:

3 (1) is, as of the date of application, receiving
4 incentive payments pursuant to the Oklahoma
5 Quality Jobs Program Act and has been receiving
6 such payments for at least one (1) year prior to
7 the date of application, and

8 (2) expands its operations in this state by creating
9 additional new direct jobs which pay average
10 annualized wages which equal or exceed one
11 hundred fifty percent (150%) of the average
12 annualized wages of new direct jobs on which
13 incentive payments were received during the
14 preceding calendar year, and

15 f. with respect to an establishment defined or classified
16 in the NAICS Manual under U.S. Industry No. 711211
17 (2007 version) or any establishment defined or
18 classified in the NAICS Manual as a U.S. Industry
19 Number which is not included within the definition of
20 "basic industry" as such term is defined in this
21 section on April 17, 2008, the net benefit rate shall
22 not exceed the highest rate of income tax imposed upon
23 the Oklahoma taxable income of individuals pursuant to
24 subparagraph (g) or subparagraph (h), as applicable,

1 of paragraph 1 and paragraph 2 of subsection B of
2 Section 2355 of this title. Any change in such
3 highest rate of individual income tax imposed pursuant
4 to the provisions of Section 2355 of this title shall
5 be applicable to the computation of incentive payments
6 to an establishment as described by this subparagraph
7 and shall be effective for purposes of incentive
8 payments based on payroll paid by such establishment
9 on or after January 1 of any applicable year for which
10 the net benefit rate is modified as required by this
11 subparagraph.

12 Incentive payments made pursuant to the provisions of this
13 subparagraph shall be based upon payroll associated with such new
14 direct jobs. For purposes of this subparagraph, the amount of
15 health insurance premiums or other benefits paid by the
16 establishment shall not be included for purposes of computation of
17 the average annualized wage;

18 8. "Gross payroll" means wages, as defined in Section 2385.1 of
19 this title for new direct jobs;

20 9. a. "Establishment" means any business or governmental
21 entity, no matter what legal form, including, but not
22 limited to, a sole proprietorship; partnership;
23 limited liability company; corporation or combination
24 of corporations which have a central parent

1 corporation which makes corporate management decisions
2 such as those involving consolidation, acquisition,
3 merger or expansion; federal agency; political
4 subdivision of the State of Oklahoma; or trust
5 authority; provided, distinct, identifiable subunits
6 of such entities may be determined to be an
7 establishment, for all purposes of Section 3601 et
8 seq. of this title, by the Department subject to the
9 following conditions:

- 10 (1) within three (3) years of the first complete
11 calendar quarter following the start date, the
12 entity must have a minimum payroll of Two Million
13 Five Hundred Thousand Dollars (\$2,500,000.00) and
14 the subunit must also have or will have a minimum
15 payroll of Two Million Five Hundred Thousand
16 Dollars (\$2,500,000.00),
- 17 (2) the subunit is engaged in an activity or service
18 or produces a product which is demonstratively
19 independent and separate from the entity's other
20 activities, services or products and could be
21 conducted or produced in the absence of any other
22 activity, service or production of the entity,
- 23 (3) has an accounting system capable of tracking or
24 facilitating an audit of the subunit's payroll,

1 expenses, revenue and production. Limited
2 interunit overlap of administrative and
3 purchasing functions shall not disqualify a
4 subunit from consideration as an establishment by
5 the Department,

6 (4) the entity has not previously had a subunit
7 determined to be an establishment pursuant to
8 this section; provided, the restriction set forth
9 in this division shall not apply to subunits
10 which qualify pursuant to the provisions of
11 subparagraph b of paragraph 7 of this subsection,
12 and

13 (5) it is determined by the Department that the
14 entity will have a probable net gain in total
15 employment within the incentive period.

16 b. The Department may promulgate rules to further limit
17 the circumstances under which a subunit may be
18 considered an establishment. The Department shall
19 promulgate rules to determine whether a subunit of an
20 entity achieves a net gain in total employment. The
21 Department shall establish criteria for determining
22 the period of time within which such gain must be
23 demonstrated and a method for determining net gain in
24 total employment;

1 10. "NAICS Manual" means any manual, book or other publication
2 containing the North American Industry Classification System, United
3 States, 1997, promulgated by the Office of Management and Budget of
4 the United States of America, or the latest revised edition;

5 11. "Qualified federal contract" means a contract between an
6 agency or instrumentality of the United States government, including
7 but not limited to the Department of Defense or any branch of the
8 United States Armed Forces, but exclusive of any contract performed
9 for the Federal Emergency Management Agency as a direct result of a
10 natural disaster declared by the Governor or the President of the
11 United States with respect to damage to property located in Oklahoma
12 or loss of life or personal injury to persons in Oklahoma, and a
13 lawfully recognized business entity, whether or not the business
14 entity is organized under the laws of the State of Oklahoma or
15 whether or not the principal place of business of the business
16 entity is located within the State of Oklahoma, for the performance
17 of services, including but not limited to testing, research,
18 development, consulting or other services in a basic industry, if
19 the contract involves the performance of such services performed on
20 or after July 1, 2009, by the employees of the business entity
21 within the State of Oklahoma or if the contract involves the
22 performance of such services performed on or after July 1, 2009, by
23 employees of a lawfully recognized business entity that is a
24 subcontractor of the business entity with which the prime contract

1 has been formed. A qualified federal contract described in this
2 paragraph shall not qualify unless both the qualified federal
3 contractor and any subcontractors originally involved in the work or
4 added subsequently during the period of performance verify to the
5 qualified federal contractor verifier that it offers, or will offer
6 within one hundred eighty (180) days of employment of its respective
7 employees, a basic health benefits plan as described in subparagraph
8 b of paragraph 1 of this subsection to individuals who perform
9 qualified labor hours in this state;

10 12. "Qualified federal contractor verifier" means a nonprofit
11 entity organized under the laws of the State of Oklahoma, having an
12 affiliation with a comprehensive university which is part of The
13 Oklahoma State System of Higher Education, and having the following
14 characteristics:

- 15 a. established multiyear classified and unclassified
16 indefinite-delivery/indefinite-quantity federal
17 contract vehicles in excess of Fifty Million Dollars
18 (\$50,000,000.00),
- 19 b. current capability to sponsor and maintain personnel
20 security clearances and authorized by the federal
21 government to handle and perform classified work up to
22 the Top Secret Sensitive Compartmented Information
23 levels,

24

- c. at least one on-site federally certified Sensitive Compartmented Information Facility,
- d. on-site secure mass data storage complex with the capability of isolating, segregating and protecting corporate proprietary and classified information,
- e. trusted agent status by maintaining no ownership of, vested interest in, nor royalty production from any intellectual property,
- f. at least one hundred thousand (100,000) square feet of configurable laboratory and support space,
- g. the direct access to restricted air space through a formalized memorandum of agreement with the Department of Defense,
- h. at least five thousand (5,000) acres available for outdoor testing and training facilities, and
- i. the ability to house state-of-the-art surety facilities, including chemical, biological, radiological, explosives, electronics, and unmanned systems laboratories and ranges;

13. "SIC Manual" means the 1987 revision to the Standard Industrial Classification Manual, promulgated by the Office of Management and Budget of the United States of America;

1 14. "Start date" means the date on which an establishment may
2 begin accruing benefits for the creation of new direct jobs, which
3 date shall be determined by the Department;

4 15. "Effective date" means the date of approval of a contract
5 under which incentive payments will be made pursuant to the Oklahoma
6 Quality Jobs Program Act, which shall be the date the signed and
7 accepted incentive contract is received by the Department; provided,
8 an approved project may have a start date which is different from
9 the effective date;

10 16. "Total qualified labor hours" means the reimbursed payment
11 amount for hours of work performed by the State of Oklahoma
12 workforce of a qualified federal contractor or the State of Oklahoma
13 workforce of a subcontractor of a qualified federal contractor and
14 which are required for the full performance of a qualified federal
15 contract;

16 17. "Qualified labor rate" means the fully reimbursed labor
17 rate paid through a qualified federal contract for qualified labor
18 hours to the qualified federal contractor or subcontractor; and

19 18. "Qualified federal contractor" means a business entity:

20 a. maintaining a prime contract with the federal
21 government as defined in paragraph 11 of this
22 subsection,

23 b. providing notice of intent to apply to the Department
24 within one hundred eighty (180) days of ~~the effective~~

1 ~~date of this act~~ July 1, 2010, or one hundred eighty
2 (180) days of the date of the award of a qualified
3 federal contract or award of a new qualified
4 subcontract under an existing qualified federal
5 contract, and

6 c. adding substantively to the contract by performing at
7 least eight percent (8%) of the total labor whether
8 qualified and nonqualified labor as determined by the
9 federal contractor verifier on a direct contract or
10 individual task order or delivery order on an
11 indefinite-delivery/indefinite-quantity or other
12 blanket contract vehicle.

13 Should a prime contractor provide notice to the Department of
14 its intent not to apply for incentive for a qualified federal
15 contract or fails to qualify under the criteria above,
16 subcontractors in order of tier ranking as determined by the federal
17 contract verifier may assume the role of the prime and apply to
18 become a qualified federal contractor provided the entity meets the
19 same criteria above with the exception that notice of intent to
20 apply with the Department must be provided within sixty (60) days of
21 the prime's disqualification or one hundred eighty (180) days of the
22 award of its subcontract, whichever is later.

23 B. The Incentive Approval Committee is hereby created and shall
24 consist of the Director of the Office of State Finance, the Director

1 of the Department and one member of the Oklahoma Tax Commission
2 appointed by the Tax Commission, or a designee from each agency
3 approved by such member. It shall be the duty of the Committee to
4 determine:

5 1. Upon initial application on a form approved by the
6 Committee, if an establishment is engaged in a basic industry as
7 defined in subdivision (b) of division (7) or in subdivisions (a)
8 through (p) of division (9) of subparagraph a of paragraph 1 of
9 subsection A of this section or as otherwise provided by subsection
10 C of this section;

11 2. If an establishment would have been defined as a "basic
12 industry" prior to the amendments to this section to convert from
13 SIC Codes to NAICS Codes. If the Committee so determines, the
14 establishment shall be considered as a "basic industry" for purposes
15 of the Oklahoma Quality Jobs Program Act; and

16 3. If employees of an establishment as defined in division (10)
17 of subparagraph a of paragraph 1 of subsection A of this section
18 meet the requirements to be considered employed in new direct jobs
19 as specified in paragraph 3 of subsection A of this section.

20 C. For an establishment defined as a "basic industry" pursuant
21 to division (4) of subparagraph a of paragraph 1 of subsection A of
22 this section, the Incentive Approval Committee shall consist of the
23 members provided by subsection B of this section and the Executive
24 Director of the Oklahoma Center for the Advancement of Science and

1 Technology, or a designee from the Center appointed by the Executive
2 Director.

3 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3606, is
4 amended to read as follows:

5 Section 3606. A. As soon as practicable after the end of the
6 first complete calendar quarter following the start date, the
7 establishment shall file a claim for the payment with the Oklahoma
8 Tax Commission and shall specify the actual number and gross payroll
9 of new direct jobs for the establishment for the calendar quarter.
10 The Tax Commission shall verify the actual gross payroll for new
11 direct jobs for the establishment for such calendar quarter. If the
12 Tax Commission is not able to provide such verification utilizing
13 all available resources, the Tax Commission may request such
14 additional information from the establishment as may be necessary or
15 may request the establishment to revise its claim. An establishment
16 may file for an extension of the initial filing date with the
17 Oklahoma Department of Commerce. Any such extension shall be based
18 solely upon an extraordinary adverse business circumstance which
19 prevented the establishment from hiring the new direct jobs as
20 projected. If an establishment fails to file claims as required by
21 this section, it shall forfeit the right to receive any incentive
22 payments after three (3) years from the start date. If an
23 establishment has filed at least one (1) claim pursuant to this
24 section but fails to file another claim within two (2) years of the

1 most recent claim, the Tax Commission, after consulting with the
2 Department of Commerce, may dismiss the establishment from the
3 program, forfeiting the establishment's right to receive incentive
4 payments based on that contract.

5 B. If the actual verified gross payroll for four (4)
6 consecutive calendar quarters does not equal or exceed the
7 applicable total required by Section 3604 of this title within three
8 (3) years of the start date, or does not equal or exceed the
9 applicable total required by Section 3604 of this title at any other
10 time during the ten-year period after the start date or during the
11 fifteen-year period after the start date for establishments defined
12 or classified in the NAICS Manual under U.S. Industry No. 711211
13 (2007 version), the incentive payments shall not be made and shall
14 not be resumed until such time as the actual verified gross payroll
15 equals or exceeds the amounts specified in Section 3604 of this
16 title.

17 C. If the average annualized wage required for an establishment
18 does not equal or exceed the amount specified in paragraph 1 or 2 of
19 subsection F of Section 3604 of this title during any calendar
20 quarter, the incentive payments shall not be made and shall not be
21 resumed until such time as such requirements are met.

22 D. In no event shall incentive payments, cumulatively, exceed
23 the estimated net direct state benefits, except for establishments
24

1 subject to the provisions of subparagraph d of paragraph 7 of
2 subsection A of Section 3603 of this title.

3 E. An establishment that has qualified pursuant to Section 3604
4 of this title may receive payments only in accordance with the
5 provisions of the law under which it initially applied and was
6 approved. If an establishment that is receiving incentive payments
7 expands, it may apply for additional incentive payments based on the
8 gross payroll anticipated from the expansion only, pursuant to
9 Section 3604 of this title. Provided, an establishment which has
10 suffered an extraordinary adverse business circumstance, as
11 certified by the Incentive Approval Committee, may be allowed to
12 voluntarily withdraw from the Oklahoma Quality Jobs Program, repay
13 to the Tax Commission the total amount of incentive payments
14 received pursuant to the provisions of this section, plus interest
15 at the rate specified in Section 727.1 of Title 12 of the Oklahoma
16 Statutes, and reapply to the Department for a new incentive contract
17 if the establishment qualifies pursuant to the provisions of the
18 Oklahoma Quality Jobs Program Act. Any funds received by the Tax
19 Commission pursuant to the provisions of this subsection shall be
20 apportioned in the manner that income tax revenues are apportioned.

21 F. An establishment that is receiving incentive payments may
22 not apply for additional incentive payments for any new projects
23 until twelve (12) quarters after receipt of the first incentive
24 payment, or until the establishment's actual verified gross payroll

1 for new direct jobs equals or exceeds Two Million Five Hundred
2 Thousand Dollars (\$2,500,000.00) during any four consecutive-
3 calendar-quarter period, whichever comes first. After meeting the
4 requirements of this subsection, an establishment may apply for
5 additional incentive payments based upon the gross payroll
6 anticipated from an expansion only.

7 G. As soon as practicable after verification of the actual
8 gross payroll as required by this section and except as otherwise
9 provided by subsection L of Section 3604 of this title, the Tax
10 Commission shall issue a warrant to the establishment in the amount
11 of the net benefit rate multiplied by the actual gross payroll as
12 determined pursuant to subsection A of this section for the calendar
13 quarter.

14 SECTION 3. This act shall become effective November 1, 2012.

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16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
17 03/29/2012 - DO PASS, As Amended.

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